Gregory L. Geist
Director

November 3, 2016

Board of County Commissioners
Clackamas County acting as the
governing body of Clackamas County
Service District No. 1

Members of the Board:

Formation of the Water Environment Services Partnership with
the Tri-City Service District
for Wastewater and Surface Water Services

Purpose/Outcomes	Ordinance Adoption and Agreement Execution to create a new municipal entity for wastewater and surface water services.
Dollar Amount and Fiscal Impact	Minimal in current budget year. Savings in future fiscal years.
Funding Source	Not Applicable
Duration	Permanent
Previous Board Action	Multiple governance conversations over the past several years. Receipt of 2008 Committee recommendation for partnership between CCSD#1 and TCSD.
Strategic Plan Alignment	Build strong infrastructure. Ensure safe, healthy and secure communities. Honor, utilize, promote and invest in our natural resources. Grow a vibrant economy.
Contact Person	Greg Geist, WES Director Chris Storey, Assistant County Counsel
Contract No.	Not Applicable

ISSUE

One of the most challenging aspects of management of Clackamas County Service District No. 1 ("CCSD#1") has been a lack of certainty regarding its long term plan for investment and operations. It has rented space and leased space, but does not yet have agreement on a multi-decade investment strategy to meet the needs of its ratepayers. This certainty is key to the long range planning necessary in the wastewater treatment industry. The infrastructure is expensive and needs to be online prior to the failure of old equipment or the arrival of additional flows, while serving the community for up to 100 years. The creation of a 190 Partnership with the Tri-City Service District ("TCSD" and, together with CCSD#1, the "Partners") for mutual operation and investment would provide that level of certainty to ensure that there are no stranded investments or service failures.

BACKGROUND

CCSD#1 has partnered with TCSD since TCSD was formed by public vote in 1980. The two districts currently contract with Clackamas County ("County") for management of operations and administration, resulting in significantly lower costs to ratepayers.

This cooperative approach expanded in 1996 with the construction of a shared laboratory facility and again in 1999 through an agreement for the rental by CCSD#1 of wastewater treatment capacity at the Tri-City Water Pollution Control Facility ("Tri-City Facility") and construction of an intertie pipeline to allow flows to reach the treatment works. In 2003 agreement was reached to consolidate future wastewater treatment for both districts at the Tri-City Facility pursuant to a plan that was ultimately rescinded for non-technical reasons.

The economic incentives for cooperative investment and operation brought the Partners together when CCSD#1 was considering options to expand its treatment capacity. After reaching agreement, CCSD#1 opted to buy in to the Tri-City Facility infrastructure for a lump sum payment of $4 million dollars. CCSD#1 leased space there and invested approximately $90 million for a high-technology membrane bio-reactor wastewater liquids treatment facility (the "MBR Facilities"). In addition, another $30+ million was invested by CCSD#1 to construct pump stations and pipes to deliver the flows to the Tri-City Facility, enhancing the interconnected network between the TCSD and CCSD#1 systems.

This cooperative agreement allows for flow management and balancing between the two districts' systems to better ensure compliance with regulatory requirements and to allow equipment to go offline for routine maintenance. The MBR Facility now produces the highest quality effluent of any treatment plant in the State of Oregon, and significantly assists the Tri-City Facility it meeting current and future regulatory requirements of the Clean Water Act.

Currently, CCSD#1 pays for a portion of the operating costs of the Tri-City Facility relative to its flow. The MBR Facilities are designed to allow ease of expansion on a smaller footprint to meet the needs of both Partners, allowing for continued high performance in meeting regulatory requirements and environmental goals at a substantially lower cost now and into the future.

To confirm the willingness of the entities to work together as partners, a regionally-representative 2008 blue ribbon group was formed, consisting of members of the business community, environmental groups, ratepayers, and elected officials from all affected cities including Gladstone, Happy Valley, Oregon City, Milwaukie, and West Linn (the "Blue Ribbon Committee"). This Blue Ribbon Committee participated in a thorough examination of the potential costs and benefits of closer cooperation and partnership between the Partners. The Blue Ribbon Committee found that: (i) there were significant financial benefits to each of the Partners' ratepayers by making collective investment and management decisions, with millions in projected savings; (ii) there was an equitable fiscal and operational model that ensured fairness for all; and (iii) governance and ratepayer interests of all stakeholders could be addressed in a collective investment and operational approach.

One of the conditions of the Blue Ribbon Committee's findings was that each Partner's ratepayers would be responsible for their prior debt. This Agreement follows that condition by requiring CCSD#1 ratepayers to be responsible for all of CCSD#1's currently outstanding debt going forward. Blue Ribbon Committee members, including the elected officials of component cities of the Partners, made a recommendation to the Board of Commissioners of Clackamas County ("BCC") to have the Partners operate more closely together as partners, with the ultimate goal of a

regional consolidation forming a single county service district under the governance of the BCC with appropriate input from stakeholders.

The concept of regionalization of wastewater efforts was further discussed by the Regional Wastewater Treatment Capacity Advisory Committee ("Regional Committee") over several years. In 2012, after a recommendation from the Regional Committee, the Partners agreed to mutually invest and acquire the Blue Heron lagoon and associated Clean Water Act permit, with each Partner equally sharing in all related costs to avoid approximately $80 million in infrastructure expenditures imposed by regulatory requirements. Further investigations and conversations at the Regional Committee in 2015-16 have indicated substantial cost savings to ratepayers through a joint investment strategy for solids handling infrastructure.

In short, when addressing three types of projects (liquids treatment, regulatory discharge permits, solids handling) over a decade, in each case there were substantial cost savings gained by the Partners working together to address mutual challenges. A white paper analysis of a regional approach to service delivery by the Partners provided an overview of the many issues in which staff anticipate ratepayers will benefit in the future as well. A copy of the white paper is attached.

To implement that regional approach, staff has evaluated several options that have been discussed publicly. At this point staff feels it is important to provide the certainty necessary to allow for a mutual investment strategy that gives assurances to both Partners that they will not be abandoned in the future. This can best be accomplished by forming a partnership between CCSD#1 and TCSD, the "Water Environment Services" partnership pursuant to Oregon Revised Statutes Chapter 190. This newly-formed regional entity would allow for a cohesive, effective, and efficient approach to service delivery that should hold costs lower and give confidence to ratepayers and the community at large that the critical elements of wastewater infrastructure will be provided in a timely manner to meet the needs of the region.

An agreement to implement this partnership approach is attached hereto.

To effectuate the agreement, the Board would also need to adopt an ordinance. A draft ordinance is attached as well.

RECOMMENDATION

The staff recommends the adoption of the attached Ordinance in a single reading through the declaration of an emergency to allow for immediate effectiveness, and execution of the attached Agreement.

Respectfully submitted,

Gregory Geist
Director

ORDINANCE NO. _____

OF TRI-CITY SERVICE DISTRICT

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL PARTNERSHIP AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 AND TRI-CITY SERVICE DISTRICT CREATING THE WATER ENVIRONMENT SERVICES PARTNERSHIP and Declaring an Emergency

WHEREAS, the Board of County Commissioners as the governing body of Tri-City Service District (the "District") is desirous of entering into partnership with Clackamas County Service District No. 1 for the purposes of providing more efficient and cost-effective wastewater and surface water services on a more regionalized basis; and

WHEREAS, the attached Intergovernmental Partnership Agreement ("Agreement") creates a new municipal entity to be known as "Water Environment Services," to accomplish that purpose as more fully stated in the Agreement pursuant to Oregon Revised Statutes Chapter 190;

NOW THEREFORE, TR-CITY SERVICE DISTRICT BOARD ORDAINS AS FOLLOWS:

Section 1. The Intergovernmental Partnership Agreement between Clackamas County Service District No. 1 and the Tri-City Service District creating a new municipal entity known as "Water Environment Services" as attached hereto as Exhibit A and incorporated herein, is hereby adopted.

Read first time at a regular meeting of the District Board held on the 3rd day of November, 2016, and the foregoing ordinance was finally enacted by the City Commission this 3rd day of November, 2016.

ADOPTED this 3rd day of November, 2016.

BOARD OF COUNTY COMMISSIONERS
as the governing body of
TRI-CITY SERVICE DISTRICT

_____
Chair

_____
Recording Secretary

ORDINANCE NO. _____

Effective Date: November 3, 2016

AN INTERGOVERMENTAL PARTNERSHIP AGREEMENT

FORMING THE

WATER ENVIRONMENT SERVICES

PARTNERSHIP

THIS INTERGOVERMENTAL PARTNERSHIP AGREEMENT (this "Agreement"), dated as of November 3, 2016, is entered into by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statute ("ORS") Chapter 451 ("CCSD#1"), and the Tri-City Service District, a county service district formed under ORS Chapter 451 ("TCSD"), pursuant to ORS Chapter 190 for the creation of a new intergovernmental entity. The parties are herein individually referred to as "Partner" and collectively as the "Partners."

RECITALS

History.

TCSD has partnered with CCSD#1 to share the costs of administrative and management services since formation by public vote in 1980. The Partners currently contract with Clackamas County ("County") for management of operation and administration, resulting in significantly lower costs to ratepayers. This cooperative approach expanded in 1999 through an agreement for the rental by CCSD#1 of wastewater treatment capacity at the Tri-City Water Pollution Control Facility ("Tri-City Facility") and construction of an intertie pipeline to allow flows to reach the treatment works. The Partners have also shared the costs of creating and staffing a certified laboratory in support of meeting Clean Water Act requirements at all facilities. The relationship was financially beneficial for both districts, and in 2003 agreement was reached to consolidate future wastewater treatment for both districts at the Tri-City Facility pursuant to a plan that was ultimately rescinded for non-technical reasons.

The economic incentives for cooperative investment and operation brought the Partners together when CCSD#1 was considering options to expand its treatment capacity. After reaching agreement, CCSD#1 opted to buy in to the Tri-City Facility infrastructure for a lump sum payment of $4 million dollars. CCSD#1 leased space there and invested approximately $93 million for a high-technology membrane bio-reactor wastewater liquids treatment facility (the "MBR Facilities"). In addition, another $40 million was invested by CCSD#1 to construct pump stations and pipes to deliver the flows to the Tri-City Facility, enhancing the interconnected network between the TCSD and CCSD#1 systems.

This cooperative agreement allows for flow management and balancing between the two districts' systems to better ensure compliance with regulatory requirements and to allow equipment to go offline for routine maintenance. The MBR Facility now produces the highest

quality effluent of any treatment plant in the State of Oregon, and significantly assists the Tri-City Facility it meeting current regulatory requirements of the Clean Water Act.

Currently, CCSD#1 pays for a portion of the operating costs of the Tri-City Facility relative to its flow. The MBR Facilities are designed to allow ease of expansion on a smaller footprint to meet the needs of both Partners, allowing for continued high performance in meeting current and future regulatory requirements and environmental goals at a substantially lower cost now and into the future.

To confirm the willingness of the entities to work together as partners, a regionally-representative 2008 blue ribbon group was formed, consisting of members of the business community, environmental groups, ratepayers, and elected officials from all affected cities including Gladstone, Happy Valley, Oregon City, Milwaukie, and West Linn (the "Blue Ribbon Committee"). This Blue Ribbon Committee participated in a thorough examination of the potential costs and benefits of closer cooperation and partnership between the Partners. The Blue Ribbon Committee found that: (i) there were significant financial benefits to each of the Partners' ratepayers by making collective investment and management decisions, with millions in projected savings; (ii) there was an equitable fiscal and operational model that ensured fairness for all; and (iii) governance and ratepayer interests of all stakeholders could be addressed in a collective investment and operational approach.

One of the conditions of the Blue Ribbon Committee's findings was that each Partner's ratepayers would be responsible for their prior debt and actions. This Agreement follows that condition by requiring CCSD#1 ratepayers to be responsible for all of CCSD#1's currently outstanding debt going forward. Blue Ribbon Committee members, including the elected officials of component cities of the Partners, made a recommendation to the Board of Commissioners of Clackamas County ("BCC") to have the Partners operate more closely together as partners, with the ultimate goal of a regional consolidation forming a single county service district under the governance of the BCC with appropriate input from stakeholders, all as more fully described on Exhibit A attached hereto.

The concept of regionalization of wastewater efforts was further discussed by the Regional Wastewater Treatment Capacity Advisory Committee ("Regional Committee") over several years. In 2012, after a recommendation from the Regional Committee, the Partners agreed to mutually invest and acquire the Blue Heron lagoon site and associated Clean Water Act permit, with each Partner equally sharing in all related costs in an estimated $35 million project, which would allow both Partners to avoid approximately $80 million in infrastructure expenditures imposed by regulatory requirements.

Further investigations and conversations at the Regional Committee in 2015-16 have indicated substantial cost savings to ratepayers through a joint investment strategy for solids handling infrastructure. In short, when addressing three types of projects (liquids treatment, regulatory discharge permits, solids handling) over a decade, in each case there were

substantial cost savings and efficiencies gained by the Partners working together to address mutual challenges.

Current Challenges.

One of the most challenging aspects of management of the Partners has been a lack of certainty regarding long term investments and operations. The plans of each Partner are inextricably linked to the other given the investments made for construction of the MBR Facility and the Blue Heron lagoon project. Each capital project has been evaluated and discussed as a standalone question, when better management practices dictate that a more comprehensive look be taken to maximize efficiencies and opportunities for ratepayers. Gaining this certainty is a key requirement in the long range planning necessary in an industry such as wastewater treatment. The infrastructure is expensive and relatively permanent once constructed, and needs to be online prior to the imposition of new regulatory requirements, the failure of old equipment, or the arrival of additional flows.

In addition to the lack of certainty, there are barriers to efficiency that arise from the regulatory structure required when operating as separate districts, even with common management. The current legal structure of the Partners holding separate National Pollution Discharge Elimination System ("NPDES") permits at the Tri-City Facility and at the Kellogg Creek Wastewater Treatment Facility ("Kellogg Facility") creates regulatory inefficiencies that can lead to duplicative requirements and avoidable expenses.

For example, solids generated at the Tri-City Plant cannot be applied to fields authorized for CCSD#1, and vice versa. This results in the inefficiency of having to send two solids trucks to eastern Oregon to apply on fields that are fairly close to each other, due to a regulatory prohibition to mixing solids, even in the truck. Discharge limitations are unique to each facility and require duplicative investment to meet a discharge restriction even when the overall system is well below the regulatory threshold. These and other similar issues could be significantly improved if there were a single entity that held all NPDES and other regulatory permits.

Benefits.

Overall, evaluations from elected officials, community groups, and professional staff, as well as nationwide industry trends, all indicate that customers of both Partners would be best served by a regional approach to wastewater and surface water services. Current capital planning by the Partners anticipate that the majority of the investment costs required going forward will be driven by the need for asset replacement and regulatory requirements, which can be more effectively managed utilizing a regional approach.

In addition, urban Clackamas County is covered by a joint Municipal Separate Storm Sewer System ("MS4") permit. CCSD#1 provides the lead for surface water services for many

cities throughout the urban area. The inclusion of such services in this partnership may be of benefit to TCSD member cities if a city elects to use them.

A permanent partnership agreement to cooperate together in addressing regional needs is in the best interests of the customers of CCSD#1 and TCSD. This formal partnership will provide long term certainty to the Partners in working together to realize the many millions in savings recognized by each of the public processes used to examine the issue over the last two decades. That certainty allows for efficient and non-duplicative capital planning, improved operations, and redirects the focus and energy of staff and stakeholders to better address the existing challenges to the wastewater and surface water systems.

It is the intention of the Parties that the formation of a partnership entity to hold all the assets of the Partners and provide for singular management of the same would allow for a regional, consistent, and efficient way to plan for and provide north Clackamas County's future wastewater and surface water needs in a way that protects public health and the environment and supports economic development (the "Purpose"). Consistent with this Purpose, both Partners have a stated policy of having "growth pay for growth" by the charging of appropriate system development charges to ensure current ratepayers are not unduly burdened by new connections, which would continue under this Partnership.

The Partners remain committed to ensuring that an appropriate and stable form of governance and public input is sought from all affected stakeholders. The governing body of the Partners has publicly stated that they are willing to consider alternatives to this Agreement, including the possibility of a vote to change governance structures, or modifications to this Agreement to allow for a different governance structure, or financial principals different than stated in this Agreement, or operating arrangements between the Partners and affected jurisdictions. In addition, the Partners are open to considering additional partner entities to join into this Agreement, including but not limited to the Cities of Milwaukie and Johnson City. The Partners believe the formation of the partnership reflected in this Agreement is a crucial positive step forward in realizing the benefits of joint operation and investment between the Partners.

NOW, THEREFORE, in consideration of the statements made above and the mutual promises and covenants contained herein, the Partners hereby agree as follows:

Article I. PURPOSE AND SCOPE.

Section 1.01 Purpose of Agreement. The objective of this Agreement is to provide for a new structure to support the Purpose. The Partners hereby form, establish and organize a municipal partnership pursuant to ORS 190.010(5), to be known as "Water Environment Services," an ORS 190 municipal partnership ("WES"). This entity shall have the full set of powers and authority allowed under ORS 190, as more fully described below. The Partners intend that all current and future facilities, including the Tri-City Facility and the Kellogg Facility, other treatment and surface water assets previously held by the Partners, and all future assets shall be operated as a combined system for the benefit of all the Partners and their ratepayers in the manner set forth herein.

Section 1.02 Governance. WES shall be governed by the WES Board (defined below), and its primary function shall be to carry out the Purpose and this Agreement, as both may be amended or supplemented from time to time. The Partners intend for WES to function as a regional agency that provides wholesale and, where applicable, retail wastewater collection, conveyance, treatment and management services and surface water management services in the public interest to protect public health and the environment and comply with all applicable laws, regulations and permits.

Section 1.03 Partnership Contribution. The Partners intend to contribute the ownership and management of all existing facilities, assets whether tangible or intangible and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements shall be deemed part of the WES Facilities (as defined below) so that the entire system is under WES's sole management and control. This full "Contribution" can occur only after all outstanding CCSD#1 Bonds (defined below) have been paid or defeased, or when the applicable bond covenants are no longer valid, or when it is otherwise legally feasible. The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish Contribution as provided herein. It is the intention of the Parties that each will take all available steps as soon as reasonably possible to effectuate the Contribution and will not wait for action by the other to accomplish this goal. Until such time as CCSD#1 is able to make the complete Contribution, it agrees that all of its WES Facilities shall under its ownership but under the management and direction of WES to the maximum extent allowable by law and the CCSD#1 Bond covenants.

Section 1.04 Transition Period. The Partners recognize that a transition period will be necessary to identify and accomplish all required and appropriate Contribution steps and to coordinate the assumption by WES of responsibilities and legal obligations related to the respective Partner's systems. It is further acknowledged that due to the complexity and cycles

required by Oregon Local Budget Law, that each of the Partners will operate consistent with their currently adopted budgets for the 2016-17 fiscal year. In addition to the Contribution referenced in Section 1.03 above, the Partners shall evaluate and proceed with a budgetary integration plan consistent with the Purpose, with the goal of having full budgetary integration with WES being the lead entity no later than July 1, 2018 (the "Transition Period").

Section 1.05 Extraordinary Cooperative Efforts. The Partners recognize that, during at least the Transition Period, extraordinary cooperative efforts will be required to coordinate the legal and service obligations of the WES System (defined below) and to complete all of the legal and administrative steps necessary to consolidate the Partners' wastewater and surface water operations. The Partners shall undertake all actions and cooperate as may be necessary to enable WES and the WES Board to operate as a legal and independent municipal entity.

Section 1.06 Termination of Prior Agreements. While acknowledging that the Contribution may take significant time to effectuate through the Transition Period, it is the intention of the Parties to move forward under this Agreement consistent with the Purpose. Therefore the Partners hereby terminate all prior intergovernmental agreements exclusively between them, including but not limited to the (i) agreement regarding the construction and operation of wastewater treatment facilities and the Tri-City Plant signed December 18, 2008 as subsequently amended on May 12, 2011; (ii) mutual investment agreement regarding the Blue Heron Lagoon site dated December 13, 2012; and (iii) alternative biosolids disposal agreement dated June 25, 2015. This termination shall be effective as of November 3, 2016; *provided*, *however*, that the operative terms of all such agreements shall continue as if incorporated by reference into this Agreement. This incorporation shall be conditional. The Administrator of the Partners or Director of WES may designate any provision or provisions of any or all such agreements as non-operative at any time and such provisions shall then have no force or effect. All such incorporated provisions, if not earlier designated non-operative, shall cease to be effective in all respects at the end of the Transition Period.

Section 1.07 Commitment & Access to Facilities. Consistent with prior agreements and the Blue Ribbon Committee recommendation, the Partners commit to deliver all sewage flows to WES for treatment and disposal or reuse. Each Partner foregoes the opportunity to treat and dispose or reuse its wastewater flows individually and decides to share control of access to and capacity in wastewater treatment facilities, as more fully set forth below. Because this Agreement contemplates that all Partners will be using WES Facilities and because most, if not all, Partners or their component communities will be transporting wastewater flows through the political jurisdictions of one or more other Partners, the Partners declare and confirm (i) that this Agreement is not intended as an instrument to permit one Partner to control the wastewater collection services furnished by another Partner, and (ii) that each Partner will cooperate to provide the others with access for wastewater flow to the WES Facilities either by sharing conveyance capacity, if reasonably available, or by facilitating the acquisition of

necessary rights-of-way, franchises, and permits through and under public streets, rights-of-way, and property under reasonable conditions and terms for such access.

Section 1.08 Ownership of Assets. The Partners recognize that they have developed and maintained their respective systems, and that several such systems are integrated between the Partners to serve the ratepayers of both districts. The Partners hereby reconfirm that they each have a quantified or unquantified interest in existing facilities based on past financial contributions to the development, operation and maintenance of the facilities and related systems. In this Agreement, the Partners commit to transfer all right, title and interest in and to existing facilities to WES. Each Partner further agrees to execute or approve any and all deeds, leases, instruments, documents, and resolutions or ordinances necessary to give effect to the terms of this Agreement. To the extent a bill of sale, agreement, or other written instrument is required to document such transfer, the Partners each do hereby convey such assets hereunder without need of any further action, subject to any restrictions on transfer such as the CCSD#1 Bonds covenant.

Section 1.09 Release of Claims. Each Partner hereby releases and agrees to hold each other Partner harmless from any and all claims, demands, and causes of action arising from or relating to the legal or equitable ownership of any part of the WES System prior to effective date of this Agreement. In consideration for the mutual promises and covenants and establishment of WES, each Partner waives all potential claims against the other as to ownership of existing facilities, rights for payments under prior agreements, and as to monetary reimbursement or compensation arising from the ownership of existing facilities or its transfer to WES, *provided*, *however*, that the ratepayers of TCSD shall not be required to pay for any of the CCSD#1 Bonds.

Section 1.10 Contract Documents. The following exhibits are incorporated by reference into this Agreement as though fully set forth herein:

Exhibit A — 2008 Blue Ribbon Committee Findings & Membership

Exhibit B — WES Service Area Description and Maps

Section 1.11 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) "CCSD#1 Bonds" means all outstanding debt of CCSD#1 as of the effective date of this Agreement, including but not limited to the Series 2002A Obligations, Series 2009A

Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, and any Oregon State Revolving Fund loans.

(b) "CCSD#1 Debt Service" means the principal of, interest on, sinking fund requirements, reserve account requirements and any coverage requirement required by a resolution or order authorizing the issuance of the CCSD#1 Bonds.

(c) "Connection Charge" means the one-time connection charge collected at issuance of building permit for each new connection to a Local System or directly to the WES System, as required by WES Regulations. This is distinct from a System Development Charge, defined below.

(d) "Equivalent Dwelling Unit" or "EDU" shall initially have the meaning set forth in the ordinances of the Tri-City Service District. The Partners agree that the WES Board may change such definition at a future date and nothing in this Agreement shall be construed to restrict such change.

(e) "Equivalent Service Unit" or "ESU" shall initially have the meaning set forth in the ordinances of Clackamas County Service District No. 1. The Partners agree that the WES Board may change such definition at a future date and nothing in this Agreement shall be construed to restrict such change.

(f) "General Pretreatment Regulations" shall mean the United States Environmental Protection Agency General Pretreatment Regulations for existing and new sources as set forth in 40 CFR Part 403.

(g) "Local System" means sewer or surface water facilities that are owned or operated by a local government other than a Partner for the local collection, pretreatment, transmission, and delivery of wastewater or surface water flows to WES Facilities.

(h) "Partners" means CCSD#1 and TCSD, and any subsequently admitted Partners added pursuant to an amendment to this Agreement.

(i) "Stakeholder" means a group or entity with a material interest in the performance, goals and objectives of WES. This shall automatically include the Cities of Gladstone, Happy Valley, Johnson City, Milwaukie, Oregon City, and West Linn, and may include other interested parties such as business chambers, environmental coalitions, ratepayer groups, and technical groups as designated by the WES Board.

(j) “Surface Water Service Charge” means the WES monthly rate charged for each Equivalent Service Unit connected to Local Systems or directly to the WES System.

(k) “System Development Charge” means charges authorized by ORS 223 and implemented by WES Regulations for the payment by new connections for the impact of such new connection on the existing WES System.

(l) “WES” means the WES Partnership created by this Agreement pursuant to ORS 190.

(m) “WES Board” means the board of directors who manage and oversee WES, who shall be the Board of Commissioners of Clackamas County. The composition of the WES Board may be changed by amendment to this Agreement.

(n) “WES Debt” means any notes, bonds or other obligation of WES issued to finance or refinance improvements, betterments, or extensions to any facilities or any other costs related to the WES System but shall not include the CCSD#1 Bonds.

(o) “WES Debt Service” means the principal of, interest on, sinking fund requirements, reserve account requirements and any coverage requirement required by a resolution authorizing the issuance of WES Debt.

(p) “WES Facilities” means all wastewater or surface water treatment or reclaimed water facilities or conveyance contributed to, acquired by, constructed, managed by, received, or developed after the effective date of this Agreement by WES, including but not limited to the Tri-City Facility, the Kellogg Facility, the Hoodland Sewage Treatment Facility, the Boring Sewage Treatment Facility, the Fisher’s Forest Park Water Pollution Control Facility, the Blue Heron lagoon and outfall, trunk sewer lines, sewage pumping stations, sewage force mains, other sewage treatment facilities and outfall lines, resource management basins, reclamation and groundwater recharge facilities, flow reduction improvements, and other improvements, properties, rights, or interests used or useful in the conveyance, treatment, disposal, storage, or management of wastewater or surface water flows or reclaimed wastewater or water products, including any appurtenances thereto, and any improvements or replacements of facilities.

(q) "WES Facilities Maintenance and Operation Expenses" means all costs and expenses relating to labor, fringe benefits, power, light, water, heat, chemicals, equipment including repair and replacement thereof, tools, materials, vehicles, supplies, insurance premiums, contract services, inspections and taxes and "in lieu of taxes" directly and properly chargeable to the operation and maintenance of the WES Facilities plus administrative overhead expenses, and any other similar costs chargeable to the WES Facilities.

(r) "WES Regulations" shall mean the regulations, ordinances and rules adopted by the WES Board regarding the functions of the WES System, as may be amended from time to time by the WES Board.

(s) "WES System" means the total wastewater and surface water regional service system owned, operated, or controlled by one or more of the Partners or by WES, including the WES Facilities, or anything that is used or useful in the performance of WES's functions, including all contracts, permits, rights, and interests that are necessary or useful for operation of said facilities.

(t) "Wastewater Service Charge" means the WES monthly rate charged for each Equivalent Dwelling Unit (EDU) connected to Local Systems or directly to the WES System.

Article II. WES POWERS AND DUTIES.

Section 2.01 WES Powers. WES, an independent Oregon municipal legal entity, acting through the WES Board and duly authorized employees and agents, shall have all the powers of a county service district organized under ORS 451. Among its powers but without limiting the foregoing, WES shall have the full power and authority to:

(a) Acquire, construct, receive, own, manage, lease, sell, and otherwise dispose of real property, personal property, intangible property, and WES Facilities;

(b) Plan, develop, replace, operate and maintain WES Facilities;

(c) Enter into contracts for goods, services, work, or other benefits to WES;

(d) Borrow money and issue debt instruments, bonds, securities or provide for the borrowing of money and issuance of debt instruments in support of any lawful purpose of WES;

(e) Receive gifts or grants for the planning, design, development, construction, or operation of WES Facilities, or assets or programs to further WES's purposes, or for other purposes necessary to carry out WES's purposes;

(f) Lend money or provide services or facilities to any Partner or other governmental utility or governmental service provider in furtherance of WES's purposes;

(g) Invest its funds consistent with applicable state law;

(h) Sue and be sued;

(i) Hire and fire employees, agents, and other service providers. The Partners acknowledge that services are currently being provided by the County and do not intend this Agreement to change that relationship.

(j) Fix salaries, wages and other compensation of officers and employees, whether directly, by contract with the County, or otherwise;

(k) Employ or retain engineering, legal, financial, architectural, or other specialized personnel and consultants as may be necessary to carry out the purposes of WES;

(l) Impose, alter, regulate, control, and collect rates, charges, and assessments in one or more zones, including the ability to charge non-equal rates to customers as may be determined by the WES Board;

(m) Purchase insurance and participate in pooled insurance and self-insurance programs;

(n) Indemnify the Partners and their officers, elected officials, agents and employees in accordance with law;

(o) Adopt ordinances, rules, policies, guidelines, or requirements to effectuate the Purpose and carry out its powers and responsibilities;

(p) Regulate and be regulated as a single entity;

(q) Exercise all other powers within the authority of and that may be exercised individually by any of the Partners which are necessary to efficiently effectuate the Purpose, including regarding wastewater or surface water conveyance, treatment, discharge, disposal, reclamation, reuse, conservation, or other WES purposes or functions as set forth herein, including but not limited to the power of eminent domain; and

(r) Take any other actions as the WES Board deems necessary to implement the Purpose, to protect and advance the interests of the WES System, its Partners, and its ratepayers consistent with applicable law.

Section 2.02 Public Accountability. The Partners intend for WES to operate and function as a public agency. The WES Board shall conduct its deliberations and take action openly. Therefore, WES shall operate and conduct its business subject to the Oregon Public Meetings Law, Oregon Public Records Law, any local government accountancy statutes, and other applicable laws, regulations, and self-imposed policies.

Section 2.03 No Effect on Partner Powers. Nothing in this Agreement shall be deemed to limit the exercise of a Partner's powers as may be required or allowed by law. The WES Board may comment on proposed changes by Partners or component local government entities on land use plans and zoning codes where such changes could affect the WES System.

Section 2.04 WES Board. With respect to the WES Board, the Partners agree that:

(a) *Procedures and Voting*. Each WES Board representative shall have one vote. The WES Board shall establish procedures for conducting its meetings consistent with Roberts Rules of Order and its decisions shall be by a majority vote except when otherwise provided herein.

(b) *Unanimous votes*. For the actions that require unanimous votes identified below, proposed WES Board resolutions or motions must be distributed to the Clerk of each Partners' legislative body at least twenty-one (21) calendar days in advance of final

action by the WES Board. The following actions shall require unanimous votes by the WES Board:

(i) The proposed dissolution of WES; or

(ii) Revisions or changes with respect to payments on the CCSD#1 Bonds.

(c) *Local government representation*. To the extent that in the future the WES Board does not exactly overlap with the governing body of the Partners, the Partners hereby agree that legislative or administrative oversight by their respective local governments shall not be required for any WES Board decisions, except as expressly provided herein. WES Board members shall represent the interests of their respective local governments and constituent ratepayers in carrying out their responsibilities to act in the best interests of WES.

(d) *Local Government Review and Comment*. The WES Board shall, in a timely manner, solicit the review and comment by affected local governments of proposed changes in WES comprehensive master plans and five year capital programs. The WES Board shall consult with an affected local government on any specific WES Facility capital project proposed within such entity's jurisdiction prior to approving the final design for such project. Nothing contained herein shall be deemed to require that such local entity consent to such an action before it may proceed, and equally that nothing in this Agreement is intended to limit, impair or otherwise modify a jurisdiction's independent land use authority.

Section 2.05 Committees. The WES Board may form and convene committees and advisory bodies as it deems appropriate for review and comment, public input, efficient staff and Board work, and other purposes.

Section 2.06 Books and Records. WES shall maintain appropriate books and records as would be required of a governmental utility of similar nature including but not limited to annuals budget and audits, and any document that would be deemed a public record under Oregon Public Records Law. Any member of the WES Board or a representative of such member may examine the books and records of WES. The WES Board may appoint an auditor or accountant to review any such books and records and the costs of such review shall be charged to WES which in turn may include such costs as a WES Facilities Maintenance and Operations Expense.

Section 2.07 Executive Officer. The WES Board may, by contract, ordinance, resolution, or otherwise, appoint a chief executive officer for WES. At the time of formation, the Partners agree that the County Administrator of Clackamas County shall serve as the executive officer of WES, and further that the County Administrator may appoint a Director to provide for the management of WES. There shall be no conflict of interest in having the County Administrator or a county employee serve as the Executive Officer, Director and/or any subordinate officers, employees or agents.

Article III. WES FINANCES.

Section 3.01 WES Rates & Charges. WES shall establish rates and collect fees for wastewater and/or surface water services that will be at least sufficient to pay the expenses of maintenance and operation of the WES System and will meet the principal, interest and coverage requirements and other bond covenants of all obligations issued by WES or by a Partner on behalf of WES that are related to improvements and extensions to the WES System or refunding bonds issued for the WES System and that constitute a charge upon the revenue of such system. WES may establish billing and collection systems and rules as necessary to effectuate the appropriate funding of WES.

Section 3.02 Rate Zones and Differentials. The WES Board shall establish rates for each rate zone of WES. Upon formation, there shall be two rate zones. “Rate Zone One” shall be coterminous with the boundaries of TCSD as they may be adjusted from time to time, and “Rate Zone Two” shall be coterminous with the boundaries of CCSD#1 as they may be adjusted from time to time. For illustrative purposes, maps and a general description of Rate Zone One and Rate Zone Two are attached hereto as Exhibit B. The WES Board shall have full power and authority to levy different rates between and within the rate zones. Rate Zones shall generally each pay a wholesale charge for wastewater treatment service. At the time of formation of WES, Rate Zone Two shall also pay sufficient amounts to meet the CCSD#1 Debt Service, retail wastewater service, and surface water services. As levels of service change, the WES Board may add or subtract charges within the Rate Zones; *provided*, *however*, that the WES Board may not add any payment for the CCSD#1 Debt Service to Rate Zone One except as provided in Section 2.04. The WES Board may create sub-zones within each Rate Zone as it deems advisable for reasons consistent with the Purpose, including but not limited to the exclusion of retail charges if that service is provided by a local government whose boundaries are within one of the Partners or the inclusion of a rate surcharge to recover the cost of right of way fees levied by a local government entity.

Section 3.03 Partner Covenants to Make Payments. During the Transition Period and until the Contribution is complete, and in consideration for WES maintaining and operating the WES Facilities and as a condition for use thereof and service therefrom, each Partner

irrevocably covenants, obligates and binds itself to timely bill, collect and pay the Surface Water Service Charge, Wastewater Service Charge, and the Connection Charge. Each Partner shall pay its share of costs attributable to WES Debt Service on and other costs associated with WES Debt throughout the term of this Agreement whether or not the WES Facilities or the WES System is operating or operable and notwithstanding the performance or nonperformance of this Agreement by any Partner. Nothing in this Agreement shall be interpreted to cause WES not to charge the Partners for WES Debt Service or to relieve a Partner from paying its share of WES Debt Service. The Partners acknowledge and agree that it is their intention that WES will levy directly such rates, charges, and fees necessary for the operation of the WES System and payment of any WES Debt Service at the conclusion of the Transition Period, as allowed by existing obligations and laws.

Section 3.04 Reporting and Payment of EDU and ESU Counts. By the 25th day of each month each Partner shall deliver to WES a statement specifying the number of EDUs and ESUs served or billed by it as of the last day of the immediate preceding month. If any Partner fails to furnish such count in a timely manner, WES may estimate such EDU count and bill that Partner according to that estimate. No dispute over any such charges shall relieve a Partner from its duty to pay a monthly bill. In the event an adjustment or correction must be made, it shall be effective for a credit or additional charges in the next succeeding month. WES may adopt, as part of the WES Regulations, a program to support low income, elderly and/or handicapped persons, provided the program is consistent with applicable State law and regulations. WES may initiate, at its own expense, an audit of the EDU and/or ESU counts of a Partner or Stakeholder government entity that is served by the WES System.

Section 3.05 Connection Charge and System Development Charge. Until at least the end of the Transition Period, each Partner shall collect a Connection Charge and System Development Charge equal to the amount established by the WES Board for every additional structure connected to the WES System beginning with the effective date established by the WES Board. After the Transition Period, the WES Board may directly charge a Connection Charge or direct a Partner to continue charging the same until otherwise directed by the WES Board. Upon change in the character in use of any structure connected to the WES System resulting in increased wastewater or surface water discharge, an additional WES Connection Charge and System Development Charge shall be collected so as to account for actual use, giving appropriate credit for connection charges already paid. After the Transition Period concludes, all Connection Charges and/or System Development Charges shall be paid to WES with the Partner's next monthly payment following the month in which the charges are collected. At least annually and more frequently as necessary, the WES Board shall consider the Connection Charge and confirm or adjust the amount of the Connection Charge as needed to cover costs of additional conveyance, treatment and management capacity.

Section 3.06 Local System Expenses. The Wastewater Service Charge and System Development Charge shall be deemed a maintenance and operation expense to the maximum extent possible under existing bond resolutions and ordinances and shall expressly be made a part of the maintenance and operation expenses of the systems of each Partner in any future bond issue or other financing payable in whole or in part from the revenues of such systems and shall be payable and constitute a charge prior and superior to any charge or lien of any revenue bonds, or any obligation, issued by the Partners payable from the net revenues (gross revenues less operations and maintenance expenses) of their respective systems.

Section 3.07 Existing Partner Debt. The Partners acknowledge that CCSD#1 has currently outstanding debt, namely the CCSD#1 Bonds, relating to its existing system, and that TCSD does not have any outstanding debt. The Partners acknowledge and agree that the ratepayers of TCSD shall not be responsible in any case for the CCSD#1 Bonds and related CCSD#1 Debt Service. Nothing in this Agreement is intended or shall be construed to violate any covenant of these outstanding bonds, and such covenants, to the extent there is a conflict between them and this Agreement, shall control with respect to such outstanding bonds and any debt issued on a parity with such bonds and required to have the same covenants as the outstanding bonds.

Section 3.08 Future WES Debt. On and after the effective date of this Agreement, no Partner shall issue any debt secured by existing or future WES sewerage charges or connection revenue, WES Facilities, or any other WES revenues or assets; however, with the approval of the WES Board a Partner may issue such debt on behalf of or for the benefit of WES. It is the intention of the Partner that all future debt necessary to support the WES System shall be issued by WES if revenue-based, or by a Partner or Partners if a general obligation bond.

Section 3.09 Transition Period Capital Project. The Partners anticipate moving forward with a solids handling capital project to be located at the Tri-City Facility (the "Solids Handling Project") during the Transition Period. This may require borrowings by the Partners individually or by WES. To allow for the greatest efficiency in moving forward with said project, the Partners agree that Rate Zone One ratepayers shall be responsible for thirty-six percent (36%) of any and all costs or debt associated with the Solids Handling Project, and Rate Zone Two ratepayers shall be responsible for sixty-four percent (64%) of any and all costs or debt associated with the Solids Handling Project. This ratio shall only apply to the Solids Handling Project. As set forth in Section 3.07, Rate Zone Two shall remain solely obligated for the CCSD#1 Bonds, and Section 3.10 shall govern future WES projects.

Section 3.10 Allocation of WES Debt Amongst Rate Zones. Except as provided for in Section 3.09, whether WES Debt is issued as revenue bonds, revenue obligations, or general

obligation bonds through the Partners, or otherwise, each ratepayer within a Rate Zone shall share equally in the cost of such WES Debt, whether for capacity expansion, asset replacement, regulatory requirements, or system efficiency reasons. The WES Board shall not allocate expenses for WES Debt unevenly but shall treat all ratepayers within all Rate Zones the same with respect to such WES Debt.

Section 3.11 County Services. It is the intention of the Partners to initially contract with the County for the provision of various services. During the Transition Period, the Partners may continue to contract directly with the County for such services. No later than the end of the Transition Period, WES shall directly contract with the County for such services unless otherwise determined by the WES Board.

Section 3.12 Monetary Powers. The WES Board shall control and direct the disposition of all WES funds and monies. The County shall, consistent with Oregon law, establish appropriate accounting to ensure clear tracking of WES funds, and keep separate and adequate books and records of the same, all as required by law and regulations and as the WES Board may direct. At the end of the Transition Period, unless otherwise restricted by bond covenants or laws, the Partners shall contribute their funds to WES and the WES budget, as discussed below, shall be the primary means for the accomplishment of the Purpose and operation of the WES System.

Section 3.13 WES Budgeting. Beginning July 1, 2018, WES shall adopt and operate pursuant to an annual budget adopted consistent with Oregon Local Budget Law, including a duly composed budget committee and appropriate public hearings. The WES Board shall have full authority over such budget, including the ability to amend or adjust the same as allowed by applicable law. WES shall operate within its annual budget.

Section 3.14 Short-Term Financial Assistance for Emergency Sewer or Surface Water Repairs. Upon request from a Partner or Stakeholder local government, WES may consider providing short-term financial assistance to any Partner or Stakeholder component unit facing an emergent need to repair or replace failed sewer or surface water facilities when that emergency involves a threat to public health or public safety, poses a significant threat to the natural environment, or presents a threat to or operational difficulty for the WES System. In dealing with such emergencies, time is of the essence. The temporary financing is intended to provide financial assistance between the time of the emergency and the time when the requesting Partner has opportunity to secure other financing. It is understood the requesting Partner will make all reasonable efforts to effectively use its own financial resources and any other available funding to assure minimum use of assistance from WES.

WES resources available for use in providing emergency repair assistance to a requesting Partner shall be limited to WES funds in excess of that required by bond covenants and other debt and that which is not otherwise committed or programmed according to the adopted current WES budget and Capital Improvement Program during the term of the requested temporary financing. The amount of the requested temporary financing may not exceed the total cost of the engineering and construction of repairs necessary to restore sewer service, end the public health or safety emergency, end the threat to the natural environment, or end the threat to or operational difficulty for WES Facilities plus the cost of liquidation losses and interest as provided herein.

Temporary financing for emergency repairs may be extended for a term of up to eighteen months from the time of first withdrawal at which time it will be due and payable in full including the principal amount, the added cost of losses due to liquidation, and all interest. The Partners hereby recognize that, due to the emergency nature of the financial assistance covered by this Agreement, invested WES money may be subject to losses due to liquidation of investments as a result of providing for temporary financing assistance. Every reasonable effort will be made to avoid such losses; however, the amount of these losses will be added to the principal amount of the temporary financing and will be subject to interest charges as described herein.

Article IV. WASTEWATER CONVEYANCE AND TREATMENT.

Section 4.01 WES Service Obligation in Service Area. WES shall accept all Partner sewage flows delivered to WES Facilities within the WES System service area, except as may be allowed pursuant to Sections 4.03 and 5.03. The service area is defined as all areas within the boundaries of a Partner or areas who receive service contractually from a Partner or WES.

Section 4.02 Flow Control. A Partner shall not deliver sewage or wastewater flows generated in the WES System service area to an agency other than WES for treatment and disposal or treat such flows at its own sewage treatment facilities without the consent of the WES Board.

Section 4.03 WES System Capacity. The WES System shall be available to receive and treat wastewater flows delivered to WES Facilities by the Partners so long as the WES System has capacity to accept, treat, and manage such flows. WES shall use its best efforts to provide for increased capacity pursuant to the Purpose, in a manner designed to allow the WES System to accept, treat, and manage all flows proposed to be delivered to the WES Facilities by the Partners. The WES Board shall have the authority to limit flows from the Partners only to ensure preservation of public health and compliance with applicable laws, regulations, permits

and provisions of the Clean Water Act. Any such flow limitation shall not in any way excuse or reduce any Partner's obligation to make payments to WES under this Agreement. WES shall not be in default of its obligations under this Agreement or any other intergovernmental contract in the event that the WES Board determines that insufficient capacity exists to accept, treat, and manage sewerage flows, despite using best efforts to develop sufficient capacity. The existence of a capacity constraint or the unavailability of additional capacity shall not excuse or reduce any Partner's obligation to make payments to WES under this Agreement.

Article V. COOPERATION IN MANAGEMENT & DEVELOPMENT OF WES FACILITIES.

Section 5.01 WES Facilities. WES shall plan, construct, acquire, replace, operate, and maintain all WES Facilities such that the entire WES System and the WES Facilities are built, operated and maintained as an integrated wastewater system and surface water system in accordance with high engineering standards and in conformity with the standards of the American Public Works Association, the Water Environment Federation and requirements of the state, federal and local agencies having jurisdiction over the same. WES shall, at its sole discretion, determine the name, location, and time of construction of WES Facilities. WES shall maintain through responsible insurers, including insurance pools, public liability insurance for WES Facilities operations and responsibilities in accordance with industry standards.

Section 5.02 Local Systems. The Partners shall ensure, and WES may adopt regulations or contracts directly requiring, that the Stakeholders, customers by contract or other contributors to the WES System shall maintain and operate their respective Local Systems in accordance with high engineering standards and in conformity with the standards established by the state and federal agencies having jurisdiction over the same. Modifications and additions to Local Systems that contribute to the WES System shall be constructed and operated in accordance with the sewer standards of American Public Works Association, the Water Environment Federation and requirements of the state and federal agencies having jurisdiction over the same and made after due consultation with WES. The local units of government shall be required to secure and maintain with responsible insurers, including insurance pools, all such insurance as is customarily maintained with respect to sewage systems of like character against loss of or damage to the Local Systems against public and other liability to the extent that such insurance can be secured and maintained at reasonable cost.

Section 5.03 Liability. Any liability incurred by WES as a result of the operation of the WES System shall be the sole liability of WES, and any liability incurred by a wastewater wholesale service only customer as a result of the operation of its Local System shall be the sole liability of that entity. WES may, at its option, require any owner of a Local System become

either a named entity on the applicable permit, including but not limited to an NPDES permit, to obtain their own permit to operate the Local System, or to sign an agreement to pay all liabilities arising under the Local System as a condition of continued service, notwithstanding Section 4 above.

Section 5.04 WES Facilities Operations. WES shall operate the WES System consistent with the requirements of all applicable laws and regulations, including but not limited to the Clean Water Act. The Partners shall undertake all actions necessary to support this effort. The WES System shall be operated as an integrated whole for the benefit of all ratepayers within all Rate Zones.

Section 5.05 WES as Lead Regulatory Agency. Pursuant to this Agreement, WES will own and operate the WES System, and will hold permits required to operate the WES System, including all NPDES waste discharge permits for the various facilities, including the Blue Heron permit. The Partners will take all action reasonably necessary to support and aid WES in fully integrating the regulatory permits and requirements to achieve optimal efficiencies and operations for the WES System.

Section 5.06 Partner Commitments to Assist WES. To the extent legally feasible, each Partner agrees to give good faith consideration to WES requests for necessary zoning, land use, eminent domain proceedings and other permits and approvals to implement the Purpose. In the event that a Partner completes an eminent domain proceeding for the benefit of WES to secure property or property rights for WES Facilities, WES shall compensate the Partner for its expenses and for just compensation paid for such property and property rights.

Section 5.07 Pretreatment Program. Various facilities located within the Partners' respective jurisdictions currently contribute wastewater which includes commercial and industrial waste to the WES System. Such facilities are referred to in this Article as "Industrial Users." WES must implement and enforce a pretreatment program to control discharges from all Industrial Users of the WES System pursuant to requirements set out in 40 CFR Part 403 and the NPDES Permits. In this Article, the Partners agree to adopt and maintain sewer use ordinances that subject Industrial Users within their respective boundaries to the necessary pretreatment controls, and to implement and enforce such sewer use ordinances through the Transition Period, and thereafter support WES in the adoption and enforcement of direct regulations of the same pursuant to the WES Regulations. No Partner shall retain or adopt any ordinance provisions conflicting with or purporting to supersede the WES Regulations. WES may also implement a fats, oil and grease ("FOG") reduction program in the WES System and in Local Systems in conjunction with the affected Stakeholders or any other program related to the accomplishment of the Purpose and compliance with applicable laws and regulations.

Section 5.08 WES Regulations. WES shall promulgate and maintain the WES Regulations, and prepare any revisions necessary to provide adequate protection of the WES System and maintain compliance with the Clean Water Act, applicable federal regulations and applicable state regulations. Any proposed revisions shall be submitted to the WES Board for approval. During the Transition Period, the current rules and regulations of the Partners shall apply unless otherwise superseded by the WES Regulations. To the extent there is any conflict between Partner ordinances, rules and regulations and the WES Regulations, the Parties agree that the WES Regulations shall control.

Section 5.09 Inspections. The Partners agree that WES personnel, or WES's agents, shall coordinate with the appropriate Local System jurisdiction personnel to conduct activities to collect information on compliance with the WES Regulations, federal regulations, and state requirements. In order to accomplish these requirements the Partners agree that Agents of WES may, enter and inspect at any reasonable time, to the extent allowed by law, any part of the Local System. Further, the Partners shall support and enable, to the extent allowed by law, entry onto private property to inspect Industrial Users or hazardous conditions within the WES System or Local System. If the Partner has untransferable jurisdiction or authority to allow any of the above, the Partners shall promptly make all necessary legal and administrative arrangements for these inspections.

Section 5.10 Imminent Danger. Where a discharge to the wastewater treatment system or surface water system reasonably appears to present an imminent danger to the health and welfare of persons, or an imminent danger to the environment, or threatens to interfere with the operation of the WES system, WES may immediately take steps to identify the source of the discharge and take all reasonable actions necessary to halt or prevent the discharge.

Section 5.11 Enforcement. Whenever a discharger into the WES System or Local System has failed or has refused to fulfill any requirements of either the WES Regulations, an Industrial Discharge Permit, a Compliance Schedule, or any applicable law or regulation, WES may use any and all available legal authority that otherwise would be available to a Partner to enforce the applicable regulations, permits, conditions, or laws. Such enforcement may include collection of permit fees and industrial surcharges, application of fines and/or civil penalties, seeking injunctive relief, interruption of services, or requiring disconnection from the WES System.

Section 5.12 Accountability. A majority of the WES Board may penalize any single Partner for failure to apply and enforce the WES Regulations. This penalty may include requiring that the total of all fines, fees and other charges which are due and payable be paid by the offending Partner to WES for each day the Partner fails to apply and enforce the regulations. The offending Partner shall indemnify and hold harmless WES and its officers, elected officials, agents and employees against any damages, penalties or other losses incurred as a result of the Partner's failure to enforce the WES Regulations or applicable laws and/or regulations. Without limitation, WES may obtain the remedy of specific performance from a court of competent jurisdiction to require the offending Partner to enforce the WES Regulations or applicable laws and/or regulations.

Section 5.13 Assignment of Agreements. Any existing agreements between a Partner and any other entity that can be assigned to WES, will be assigned throughout the Transition Period. Any agreements that cannot be assigned, will continued to be operated by the Partner consistent with the terms of this Agreement and the Purpose under the direction of the WES Board until its expiration, after which a new agreement with WES as the party should be reached if feasible.

Article VI. ADDITIONAL TERMS.

Section 6.01 Effective Date & Term of Agreement. This Agreement shall become effective as of November 3, 2016, and shall have a perpetual duration until terminated as set forth in Section 6.13 below.

Section 6.02 Withdrawal by a Partner. Any Partner may individually withdraw from the obligations of this Agreement with the consent of all of the other Partners, provided that (i) all WES Debt is retired, or (ii) payment of such Partner's share, calculated by the number of EDUs and/or ESU's, as applicable, of such WES Debt thereof is fully provided for, secured and funded, by such withdrawing Partner, and the remaining Partner(s) shall continue to be bound by this Agreement as it may be amended. A withdrawing Partner shall not have any right to any assets of the WES System, including any assets contributed by such Partner into the WES System, unless specifically agreed to by the WES Board in its sole and absolute discretion.

Section 6.03 Amendment of Agreement. This Agreement may be amended with the approval of all the Partners.

Section 6.04 Notice. Notices required to be given to Partners shall be deemed given when served on the respective Clerk of the governing body of such Partner or three business days after mailed to the business address of such Partner.

Section 6.05 Governing law & Venue. This Agreement shall be governed by the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof. The exclusive jurisdiction and venue for any lawsuit between the Partners arising out of this Agreement shall be in Clackamas County Circuit Court.

Section 6.06 Assignment. This Agreement shall be binding on each Partner and the successors to them and may not be assigned in any respect without the consent of all Partners except by operation of law.

Section 6.07 No Third Party Beneficiaries. The Partners expressly do not intend to create any right, obligation or liability, or promise any performance, to any third party, even if such party's jurisdictional boundaries are partially or wholly contained within one or more Partners. The Partners have not created any right for any third party to enforce this Agreement.

Section 6.08 Severability. It is the belief of the Partners that all provisions of this Agreement are lawful. If any covenant or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision, or part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement. In such event, the Partners shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement of such covenant or provision.

Section 6.09 Entire Agreement. This Agreement embodies the Partners' entire agreement on the issues covered by it, except as supplemented by subsequent written agreements that the Parties make. All prior negotiations, discussions, and draft written agreements are merged into and superseded by this Agreement.

Section 6.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered for all purposes as an original.

Section 6.11 Waiver. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

Section 6.12 Remedies. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by any Partner.

Section 6.13 Termination. This WES partnership Agreement may be terminated only upon the unanimous agreement of all of the Partners. The withdrawal of a Partner from the partnership shall not cause a dissolution or otherwise impair the continued operation of WES.

IN WITNESS WHEREOF, each party has caused this Agreement to be signed by its duly authorized officer or representative as of November 3, 2016.

Clackamas County Service District No. 1	**Tri-City Service District**
_____	_____
Chair	Chair
_____	_____
Clerk	Clerk

EXHIBIT A

June 3, 2008

Board Clackamas County Commissioners
Public Service Building
2051 Kaen Road
Oregon City, Oregon 97045

Dear Commissioners:

I am pleased to submit the recommendations of the Community Partners Task Force on wastewater management for your consideration.

The committee was composed of representatives from Clackamas County Service District #1, Oak Lodge Sanitary District, Milwaukie, Happy Valley, Damascus, Lake Oswego, and the three cities that make up the Tri-City Service District, Gladstone, Oregon City, and West Linn. Lake Oswego voluntarily withdrew from the committee when it became clear that its participation was premature.

The work of the task force and its recommendations offers Clackamas County a fresh start on an issue that has eluded community consensus for over 20 years. While we have not resolved all the challenges around wastewater management, we agreed on many core assumptions that will form the foundation of a future community partnership. We are confident that this partnership will protect our environment, save ratepayers millions of dollars of avoided costs, and ensure that the economy will continue to grow.

Our report to the Board is not unanimous. The representative from CCSD#1's Citizen Advisory Council and from Oak Lodge Sanitary District voted not to support the recommendations. Neither challenged the environmental, management or community economic benefit of the proposed regional wastewater partnership. They supported the vast majority of recommendations but did not agree with the majority of the Task Force on issues of representation and governance. The representative from the Oak Lodge Sanitary District wanted it recognized that the Oak Lodge did not receive a specific rate benefit based on the financial modeling.

We have further offered the Board a road map forward. The members of the task committee believe this will help you and the community to define the nature and scope of the regional wastewater partnership.

Respectfully yours,

Greg DeGrazia
Chair, Community Partners Task Force

Community Partners Task Force – Summary Report and Recommendations

On January 2, 2008 the Clackamas County Board of Commissioners (the "Board") created a Community Partners Task Force to facilitate discussions between all wastewater service providers in urbanized Clackamas County. The purpose of the Task Force was to explore the formation a collaborative partnership to capture the financial benefits of the economies of scale inherent in large capital investments.

The Task Force was made up of one elected representative from Damascus, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Oak Lodge Sanitary District, Oregon City, West Linn, a County Commissioner, two business leaders, two citizens at large and a CAC member from CCSD#1. The Task Force was asked to assess the benefits of regional collaboration and to make recommendations to the Board regarding equity, fairness, and governance of a potential partnership by June 2008.

The Board asked the Task Force to answer three key questions:

Q1. Cost Benefits: Are there compelling financial benefits to ratepayers of each jurisdiction to make collective investment and management across current service district boundaries attractive? If so, what are the financial benefits for the region?

YES.

It makes good financial sense to work together. The analysis indicates that together the community can realize up to a $300 million savings over the next twenty years by working and investing together. There is broad public support and understanding of the advantages (as demonstrated by survey data) of working together.

Q2. What is an equitable fiscal and operational model for future collective investments in wastewater treatment systems to recognize past and present investments made by participating jurisdictions and ratepayers? How do we ensure that those who benefit the most from development pay their fair share of new investments in public infrastructures? Can equity and fairness for each partner be achieved?

YES.

Regional equity and fairness can be gained if based on clearly defined assumptions. These assumptions are:

a. The recommendation is to adopt a common regional treatment rate after capacity parity is reached by the participating service providers.

Treatment capacity parity is defined as the point at which all partners have addressed historical deficiencies and face similar capacity needs in the future.

b. Service partners will make collective decisions regarding all future investments in treatment facilities after capacity parity is achieved.

c. Decisions about common ownership of assets and district(s) consolidation will be delayed until treatment capacity parity is achieved and a permanent partnership agreement is in place.

d. Conveyance and collection will remain the responsibility of individual entities. Each entity will be responsible for financing their own conveyance and local collection system to assure equity and fairness while securing the benefits of a regional treatment rate. Local entities may enter into contract relationship with Clackamas County to assist in design, construction, and management of local collection and conveyance systems.

f. There will be no capacity expansion investments in Kellogg Treatment Plant with a goal of reducing the plant footprint over time and as economically feasible.

g. Treatment capacity for future community growth will likely be constructed at Tri-City or utilizing another cost effective option after a regional strategy is adopted.

h. Equity payments, subsidies and/or host fees may not be necessary to achieve equity and fairness.

i. The partners will make collective decisions about desirable environmental improvements and livability amenities as future investment in regional wastewater treatment facilities are planned.

j. The Board will facilitate regional equity by implementing a wastewater service policy after capacity parity has been reached. The foundation of this policy will be that no new service will be provided to customers in unincorporated areas outside existing districts. Service districts will only extend new service to areas already within a city boundary.

k. Unincorporated areas being served before capacity parity is achieved will not be compelled to annex to a city to continue to receive service.

l. Growth pays for growth through system development charge and related processes and other financial tools.

Q3. How can the financial and governance interests of all participants and their ratepayers be guaranteed into the future? What are the specific terms of these community covenants? Can the region agree to a governance model to guide a regional wastewater capacity management partnership?

YES.

a. The Task Force recommends the creation of a wastewater partnership to serve as the foundation of regional wholesale wastewater treatment collaboration.

b. The Task Force recommends adoption of the Washington County Clean Water Services "advise and consent" governance model as the operational model of the proposed wastewater partnership.

c. The partnership recommends forming an advisory body composed of representatives appointed by each partner entity.

d. The wastewater partnership will make recommendations about capital improvements, planning, policy, and financial decisions regarding rates, financing, and annual budgets.

e. The Board is recognized as the legally accountable governing board of the regional partnership. The Board will act on the recommendations of the wastewater partnership, which will serve in an advisory capacity to the Board.

f. Day-to-day system management, operations, programs, and permitting of partner assets will be or remain the responsibility of the County through its designated agency.

g. Partners will be bound by all collective recommendations and resulting decisions by the Board.

Additional Task Force recommendations

The Task Force asks the Board of County Commissioners commit to the above recommendations as the foundational assumptions of a regional wastewater management partnership.

The Task Force asks that its recommendations be made explicit County policy through a formal Board action. Once this action is taken, the Task Force recommends the following:

a. The Board should ask each partner entity to formally ratify the Board policy action.

b. All those who ratify the Board's policy will be invited by the Board to form a provisional partnership. The purpose of the provisional partnership is to develop the by-laws, agreements and protocols for a permanent regional wastewater management partnership for consideration by the BCC and each of the partners.

c. Each partner jurisdiction will nominate one representative to serve on the provisional partnership committee including Damascus, Gladstone, Happy Valley, Milwaukie, Oregon City, West Linn, and Oak Lodge Sanitary District. In addition, the Board will appoint one representative from the CCSD#1 unincorporated area and one representative from the Board.

d. The provisional partnership will complete its work and submit its recommendations to the Board no later than 10/1/08.

e. All partners will be asked to ratify and bind themselves to the agreements adopted by the Board.

f. All parties choosing to ratify the agreements will enter into a permanent regional wholesale wastewater management partnership.

Additional items to be considered by the provisional committee:

g. The Tri-City equity issues around Kellogg's final disposition need to be addressed by the interim committee.

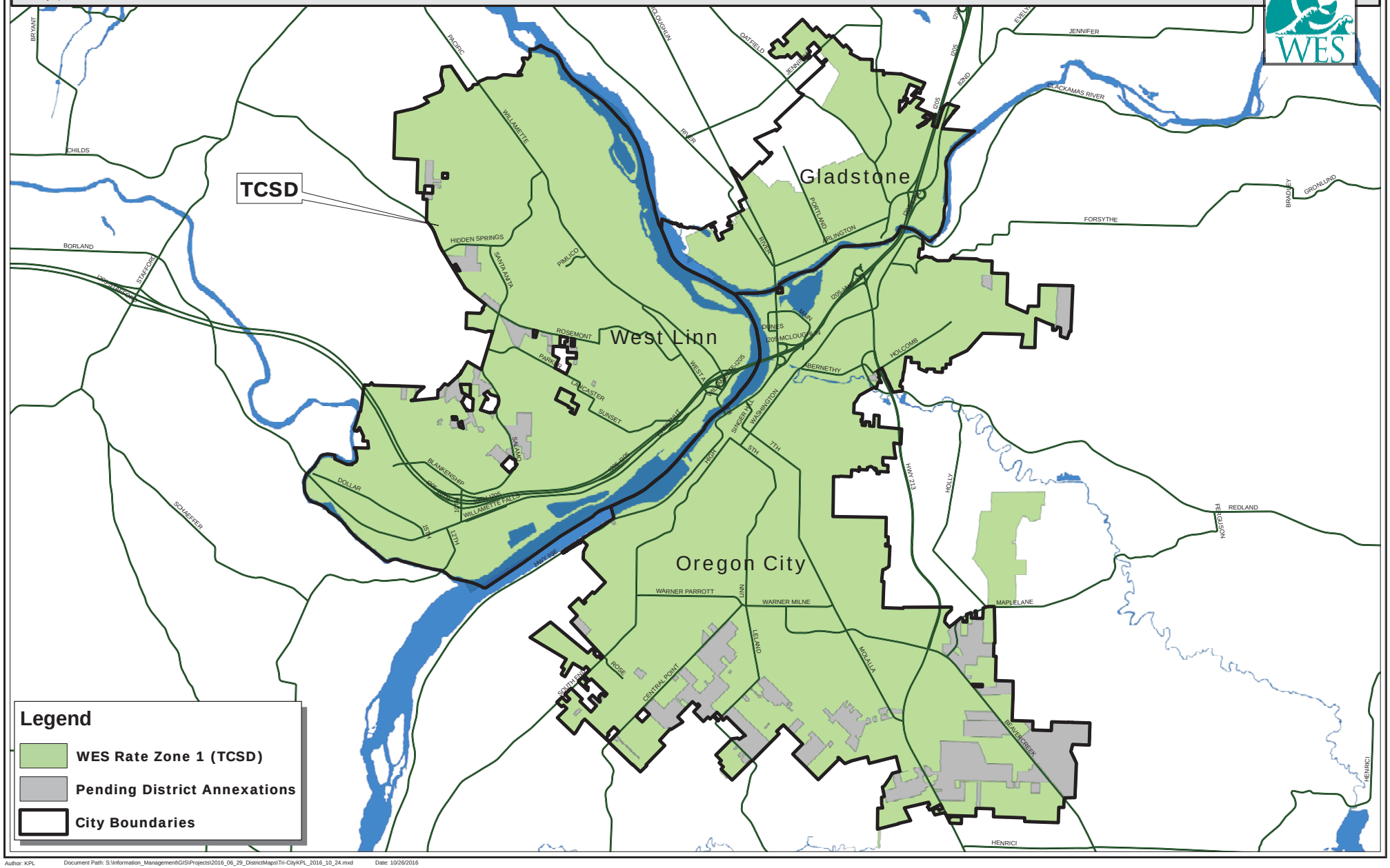
h. No regional rate setting will take place until the parties achieve capacity parity. Until then, partners will use their existing rate schedules.

EXHIBIT B

WES Service Area Description

The service area of Water Environment Services ("WES") encompasses the geographic boundaries of (i) the Tri-City Service District ("TCSD"), which includes the City of West Linn, the City of Oregon City, the City of Gladstone, and certain unincorporated areas; and (ii) Clackamas County Service District No. 1 ("CCSD#1"), which includes unincorporated areas of Clackamas County, the City of Happy Valley and the communities of Hoodland, Boring and Fischer's Forest Park. CCSD#1 also contractually serves the cities of Milwaukie and Johnson City, and both contractual customers will be deemed ratepayers of WES Rate Zone 2. WES Rate Zone 1 is coterminous with the boundaries of TCSD, as they may be adjusted from time to time. WES Rate Zone 2 is coterminous with the boundaries of CCSD#1, as they may be adjusted from time to time.

Exhibit B - WES Rate Zone 1 (TCSD)



Author: KPL Document Path: S:\Information_Management\GIS\Projects\2016_06_29_DistrictMaps\Tri-CityKPL_2016_10_24.mxd Date: 10/26/2016

Exhibit B - WES Rate Zone 2 (CCSD#1)

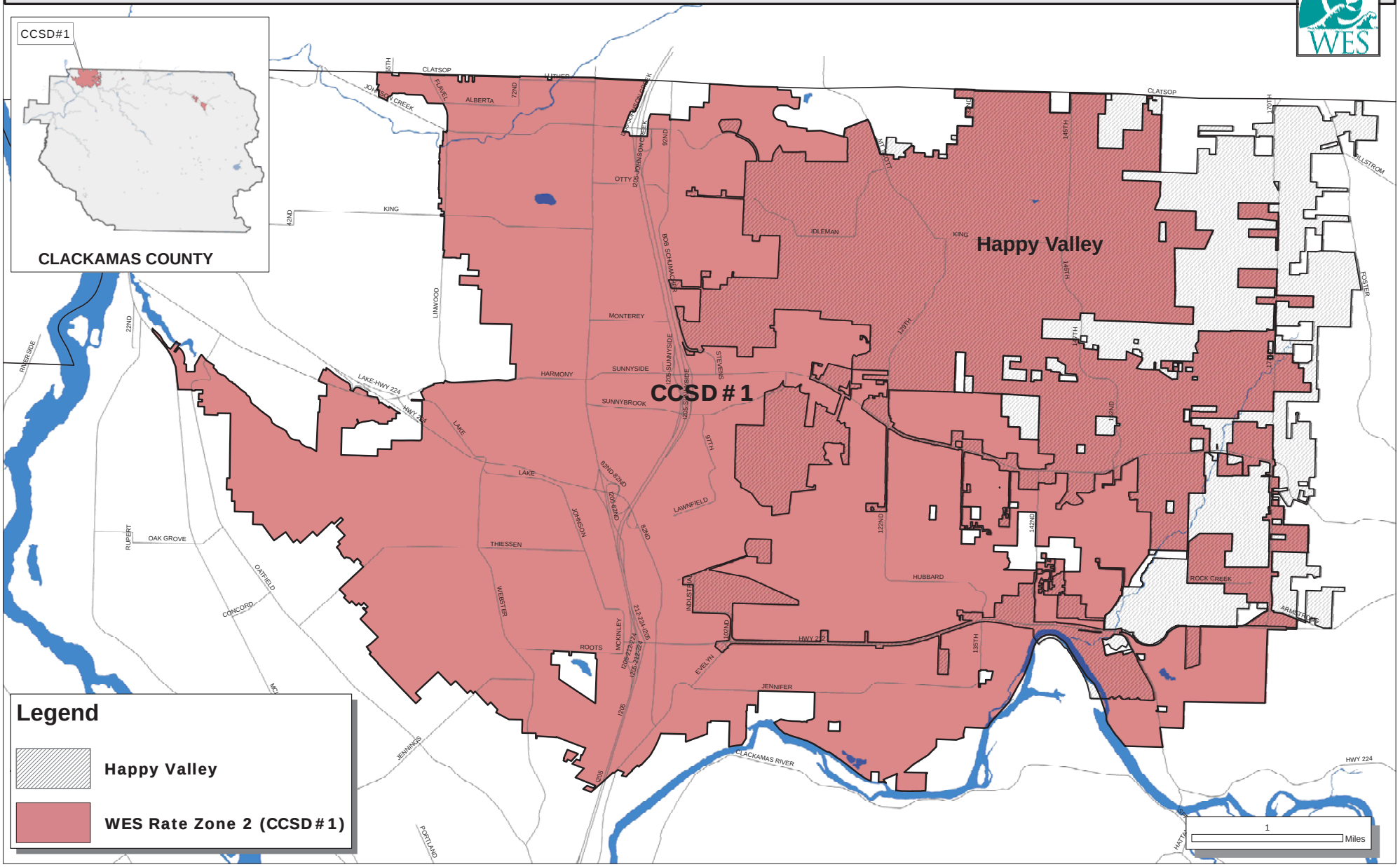


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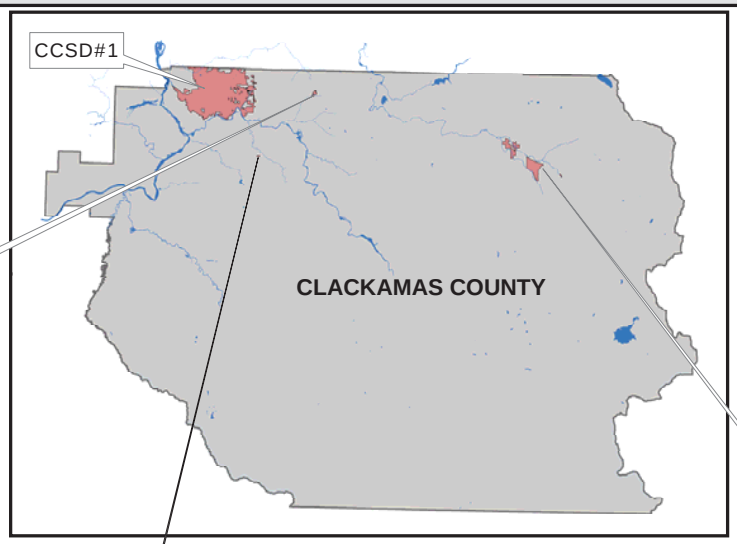
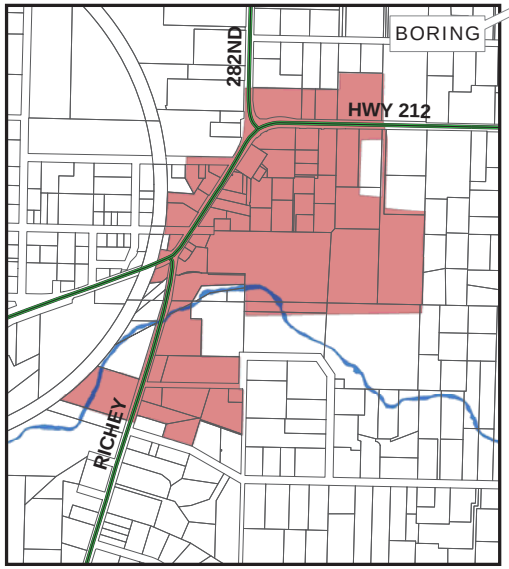
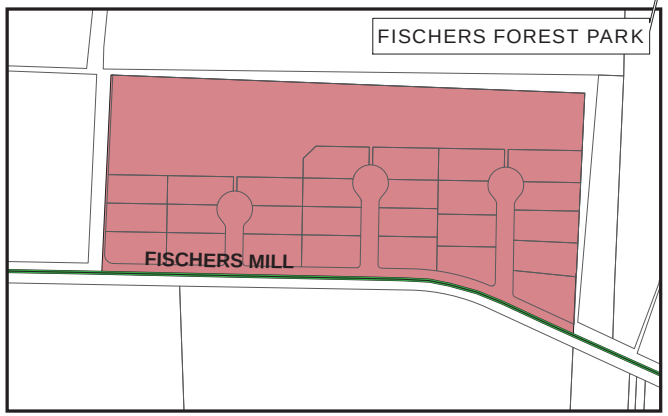
Exhibit B - WES Rate Zone 2 (CCSD#1)

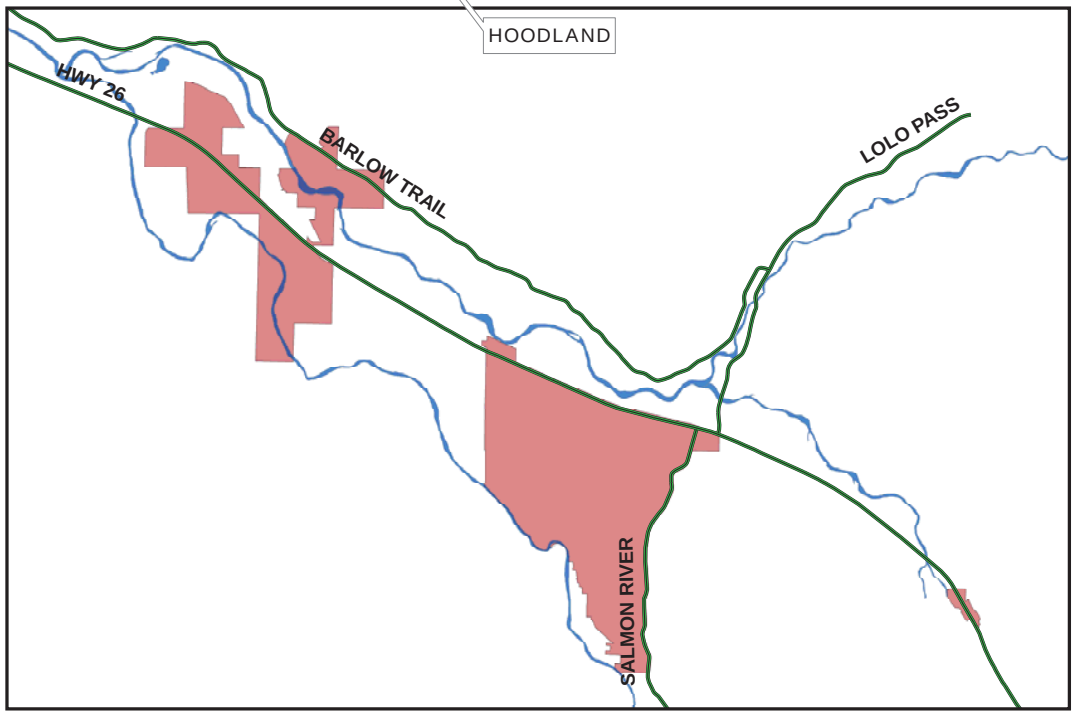
Legend

WES Rate Zone 2 (CCSD#1)









Author: KPL Document Path: S:\Information_Management\GIS\Projects\2016_06_29_DistrictMaps\CCSD1_MAP_2_KPL_2016_10_24.mxd Date: 10/26/2016

WHITE PAPER: ANALYSIS OF BENEFITS

OF REGIONALIZATION TO

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

AND

THE TRI-CITY SERVICE DISTRICT

July 2015

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Executive Summary

On May 27, 2015, the Regional Wastewater Treatment Capacity Advisory Committee ("Regional Committee") voted to have a discussion regarding governance of both Clackamas County Service District No. 1 ("CCSD#1") and the Tri-City Service District ("TCSD") at the Regional Committee level. This discussion is being held in the context of the Regional Committee examining whether or not there are ratepayer benefits to the two districts co-investing in solids infrastructure (digesters). The Board of County Commissioners ("BCC"), as the governing body of each CCSD#1 and TCSD, voted to support having the governance conversation with the Regional Committee. Therefore, staff has developed this white paper to articulate some the factors that would be relevant to the Regional Committee in considering the issue.

It has been a common point of discussion within Water Environment Services ("WES") that the current structure of two separate service districts, while saving ratepayers a certain amount of money, is somewhat inefficient and complicates long-range capital planning efforts. The concept of the two districts working together has shown up in several documents throughout the two districts' history. One example is the intergovernmental agreement entered into between CCSD#1, the City of Gladstone, and TCSD in 1999 allowing for the portion of Gladstone that is served by CCSD#1 to be annexed into TCSD and pay only the TCSD wholesale rate. Section 13.1of this agreement states that, "[t]he parties agree to consider use of ORS 190 to create new service entities or other methods to more cost-effectively provide services." While WES staff internally recognized the value of a regionalized approach, they continue to diligently ensure that each district maintains separate funding, budgeting, expense tracking, and accounting.

While history of the districts began as one of separateness, the opportunity to take advantage of the savings that arise from a joint operation has led to several significant decisions along the path towards greater integration. These include sharing staff, laboratory services, facility maintenance equipment, and space on the operating side, to rental and ultimate capital investments. In 2008, a regional advisory body was formed to consider regional service issues and, supported by reports and estimates provided by a third party engineering firm, reached the conclusion that the ratepayers in each district would be substantially better off with full integration of the two districts. And now, as it has multiple times over the last three decades, the issue has again become a matter of policy deserving of the attention of decision makers.

Staff made certain assumptions in evaluating this position. The first is the scope of the discussion. The work of the prior 2008 blue ribbon group assumed an integrated regional wastewater service provider that could provide both wholesale and retail services, as desired by constituent members. Similarly, the purpose of the Regional Committee is to evaluate, on an ad hoc basis, the similar idea of whether there are benefits to cooperative investment across the two districts. Therefore staff's framework for this evaluation is to provide the Regional Committee sufficient information to test the proposition of whether the ratepayers of the two districts would experience material benefits from regionalizing the provision of wastewater services. From a timing perspective, staff assumed a planning horizon of 30 years to match several of the existing studies or alternatives analyses. With respect to implementation, there are several possible mechanisms to achieve regionalization. In brief, they are:

- Merger of CCSD#1 and TCSD into a single, larger ORS 451 county service district with the Board of County Commissioners ("BCC") remaining as the governing body. This would presumably include reforming the advisory committee to reflect the combined stakeholder group, and the subsequent annexation of Milwaukie into the merged 451 district.

- Formation of an ORS 450 sewer district that contains the boundaries of CCSD#1 and TCSD, as well as the City of Milwaukie. The governing body of the district would be directly elected by the residents of the newly-formed district.

- Creation of a partnership entity pursuant to ORS 190 in which the impacted entities would vest the new partnership with a range of authority and assets. For the purposes of this paper, staff assumed that the partnership would hold all the assets and regulatory permits required for current level wastewater service delivery. The governing body of the partnership would be constituted based upon the terms of the partnership agreement.

While each of those three options has benefits and challenges associated with them, they will not be explored herein. If desired by the Regional Committee, staff can subsequently provide a thorough written examination of the three main regionalization options. Rather, a baseline level of integration can be assumed from implementation of any of the three options (referred collectively to herein as "Regionalization"). Assuming this, staff analyzed what benefits arise through Regionalization that would not be available to the districts if they remained separate.

Staff evaluated four key areas of what information would be relevant to the Regional Committee in considering the Regionalization issue: Regulatory, Capital, Governance (decision-making), and Administrative. Staff also reviewed prior work done by the community, industry publications and commentary from relevant discussion of similar issues. Overall, the analysis shows that substantial savings would be achieved for all ratepayers concerned through a regional approach that results in a consistent, integrated, and streamlined organization. The greatest savings stem from combined efforts in dealing with regulatory and capital issues, with lesser monetary benefits emerging from governance and administrative efficiency gains. In total, the savings that could be available to ratepayers of each district through an integrated and collaborative approach amount to hundreds of millions of dollars over the next 30 years. Below is a summary of these findings:

Regulatory:

Under the current system, TCSD and CCSD#1 each hold separate Clean Water Act permits for their facilities. Despite the infrastructure integration between the districts by the membrane bioreactor treatment train and intertie pipelines, the regulatory schemes are wholly separate. Currently, the load allocations available under one permit are not transferrable or available under another. However, it is possible to link all the districts' permits together under what is known as a watershed permit. This permit is what is used in Washington County, which has four treatment plants operating under one watershed-based Clean Water Act permit. Staff

have explored this opportunity with the Oregon Department of Environmental Quality ("DEQ"), and has been informed that in order to secure a watershed permit, a single entity to be the permit holder for facilities included in the watershed permit. Therefore, the option of a watershed permit would only become available when a single entity holds the permits for the Kellogg Plant, the Tri-City Plant, and the newly-acquired Blue Heron facility (collectively, the "Permits").

Combining the aforementioned Permits into a single watershed permit would create significant efficiencies in meeting discharge limitations. This new watershed permit would not be less restrictive, but it would allow compliance to be measured across the broader watershed. That is, if there is excess capacity for meeting a limitation, such as biological oxygen demand at the Kellogg Plant, that excess could be used to meet the requirements at the Tri-City Plant. This could result in substantial savings by allowing for the most cost-effective means of meeting permit limits to be constructed at the most appropriate facility, rather than having to separately construct treatment infrastructure at each facility to meet each discharge limitation.

Possession of a watershed-based permit can also help avoid unnecessary investment in required redundancy by allowing the collective system of investments to meet the required thresholds, rather than having to meet them at each individual treatment facility. The watershed permitting approach has been identified as an excellent way to meet anticipated regulatory challenges that will affect both districts, including temperature discharge limitations, ammonia discharge restrictions, metal removal requirements, etc.

Overall, a watershed-based permit would result in various benefits to the permitee, the permitting authority, and the environment. For both entities, one permit is easier to administer and implement, and provides the optimal economy of scale for meeting regulatory requirements. Both districts would be better able to focus their resources on the most critical problems, while the integrated permit would provide a greater level of protection for the environment than what might have been realized under the existing system of multiple permits.

Capital:

Wastewater treatment efficiencies can typically be realized by economies of scale. Historically, TCSD and CCSD#1 have each experienced relatively low rates due to federal grants subsidizing a large portion of costs associated with construction of treatment facilities. As those grants are no longer available, both districts are faced with paying the full cost of capital improvements for regulatory compliance, asset replacement and growth. Staff anticipates that each district's ratepayers would save hundreds of millions of dollars through a mutual investment strategy that leverages a larger scale operation in all three of those investment areas.

<u>Regulatory Compliance</u>. As noted above, each district is faced with the high likelihood of required investment to meet increasingly restrictive discharge limitations. The membrane bio-reactor facility ("MBR Facility"), constructed by CCSD#1 at the Tri-City Plant, produces the highest quality effluent of all the treatment processes, and in doing so, is helping the Tri-City Plant meet permit requirements. It is sized for easy expansion and, therefore, remains the most cost-effective way for increasing the levels of treatment being achieved for existing or future wastewater streams. Similarly, the mutual investments made by both CCSD#1 and TCSD in the

Blue Heron permit and outfall, as a strategy to meet temperature discharge restrictions being imposed on the Tri-City Plant and Kellogg Plant, have the potential to save each district significant monies. The initial design and planning estimate of the cost to implement the Blue Heron permit approach is approximately $40 million, while the non-Blue Heron alternative of constructed wetlands is estimated to cost approximately $120 million and have a significantly higher annual operating cost.

Asset Replacement. Asset replacement costs are anticipated to become the largest capital cost for the districts over the next few decades, as the initial investments dating from the 1970s and 1980s wear out. Prioritizing and optimizing the reinvestment strategy across a regional system is the lowest cost option. Currently, the districts benefit from shared maintenance crews, as well as a staff of engineers and inspectors, who ensure projects are completed properly and at the lowest possible cost that meets operational needs. Regionalizing asset replacement efforts would enhance that existing productivity and provide for the lowest cost provision of this required investment.

Growth. The Regional Committee has already received presentations on savings that are anticipated to result from joint investment in meeting the needs of growth. Regarding the solids handling project alone, the districts are anticipated to save nearly $120 million by working together in a co-investment strategy to solve the digester capacity issue. Staff notes that the districts have reached “capacity parity” at this time, meaning they are faced with similar needs on similar timelines going forward from a service level standpoint. Further, each district is uniquely positioned to address a particular need of the region - TCSD is better situated to address solids handling, and CCSD#1 is better situated to address liquids handling. Through Regionalization, each district would save hundreds of millions of dollars.

Another benefit of Regionalization would be the addition of new ratepayers to the existing system. As new connections join, WES charges both a system development charge to recover costs for newly-constructed infrastructure, as well as a connection charge. These new connections in essence become partners in an ongoing enterprise; they share equally in the responsibility for paying for regulatory-driven investment or asset replacement of assets whose useful life was exhausted prior to their connection to the system. These additional connections spread the cost of regulatory investment and asset replacement across a broader base, reducing the per-household charges for the existing ratepayers. Operating together with an expanded ratepayer base allows for a lower overall cost for the provision of wastewater services and helps to control rate increases for existing and future ratepayers.

Governance:

Currently, the Board of County Commissioners serves as the governing body of each of CCSD#1 and TCSD. The BCC also has broad responsibilities for a wide range of other issues. Ensuring that the interests of ratepayers are being heard and reflected in decisions, WES supports seven different advisory committees, as well as briefings to and decisions by the BCC, for a total of eight. Of those, six relate to the Districts. This leads to a multitude of sometimes inconsistent voices coming to the governing body. Through Regionalization, the decision-making process could reduce that number down to two, all while improving both transparency and collaboration.

One of the material challenges facing each of the districts is a lack of certainty. The current status quo is that the districts work together on some projects from an operational standpoint, and may work together from a capital standpoint on some, but not all future projects. It is undecided which, if any, may be included in a co-investment approach. The question of whether or not the districts will work together has been an ad hoc discussion for each project vetted through the appropriate advisory committees. This leads to substantial difficulty in making long term plans for the districts. WES staff has tried to create the lowest-cost capital plan for regulatory investments, asset replacement, and meeting the needs of growth; plans that are being reviewed and revised from a comprehensive perspective at this time. Often, the lowest-cost approach requires an assumption that the two districts will work together on an investment. However, the ad hoc nature of decision-making for each investment places a barrier to reliance on those assumptions.

Regionalization would allow certainty in realizing the many cost-saving benefits anticipated in those future plans. It would enhance the stability of decision-making by allowing all affected stakeholders to have a voice in all material decisions on a consistent basis, and ensure transparency and collaboration in that decision-making process. It would also reduce the amount of time and money spent supporting the eight current decision-making or advisory bodies. This approach would provide clear direction regarding these major policy issues, allowing staff to better plan for future requirements, develop a consistent and reliable rate profile designed to levelize rate changes, optimize sequencing of efforts and realize the hundreds of millions of dollars in projected savings.

Administrative:

WES staff currently provides administrative support to three districts. As part of that effort, they carefully track expenses across each district and allocate shared employees based on a real time level-of-effort measure. Because the affairs of all three districts are managed by WES employees simultaneously, complex accounting systems have been implemented to assure all costs are properly assigned to the correct district, including the allocation of many costs that are common to all three. Budgets and audits are prepared each year by WES for each district. To legally have the authority to do the currently agreed upon work, WES manages a number of intergovernmental agreements between the districts and also with the County. Each effort at tracking, budgeting, auditing, and ensuring legal compliance add to the administrative overhead of the districts. While this current arrangement is still a lower cost option than each district going it alone, it does have room for improved efficiencies.

A significant challenge that will face the districts, especially TCSD, is the manner of financing combined capital projects. Currently, CCSD#1 is rated AA for municipal debt issuance; however, TCSD is not rated at all since it does not have any outstanding tradable debt. Under the current independent structure, each district will need to separately pursue extensive and complicated procedures to borrow funds sufficient to pay for any agreed-upon portion of a project. Even then, funding from both must be ready at the time a project starts. This is a challenge that would be greatly mitigated if done by a single regional entity that would likely be able to achieve a higher bond rating, reduce borrowing costs, as well as eliminate other risks.

History of the Districts

This section summarizes the history and structure of the districts to ensure that all participants in the conversation are operating from the same set of common facts.

History of CCSD#1:

CCSD#1 was organized in March of 1967 pursuant to Oregon Revised Statutes ("ORS") Chapter 451 to service the urban unincorporated areas of northern Clackamas County and the City of Milwaukie. CCSD#1 and Milwaukie jointly applied for and received Clean Water Act grants in 1970 for the construction of the Kellogg Creek Wastewater Treatment Plant ("Kellogg Plant") that was completed in 1975, and expanded in 1988 to include digester capacity for solids handling. Its original design rating was for 10 million gallons per day average dry weather flow. The Kellogg Plant discharges into the Willamette River under the Clean Water Act National Pollutant Discharge Elimination System ("NPDES") Permit Number 100983 (the "Kellogg Permit"). The cities of Milwaukie and Johnson City contract with CCSD#1 for wholesale wastewater treatment services. The served urban unincorporated areas and the subsequently-annexed City of Happy Valley receive retail services, including maintenance and management of sewer and storm water infrastructure, from the initial line in the street to the treatment plant. Several investments were made to maintain the Kellogg facility and comply with regulatory issues from1975 to 1999. More are anticipated to occur in the next few years.

CCSD#1 was originally managed by the County through an agreement with its Road Department. Upon formation of TCSD in 1986, the Department of Utilities, later renamed as Water Environment Services, provided a common, dedicated pool of staff to support both districts at a lower cost than could be achieved if each went its separate way. This arrangement has been implemented for the last 30 years. Under it, CCSD#1 is billed for the cost of employees that support only CCSD#1 activities, such as line maintenance crew or Kellogg Plant operators, but share the cost of certain administrative positions such as director, water quality manager or finance manager, with TCSD and the Surface Water Management Agency of Clackamas County ("SWMACC"). Since CCSD#1 also provides surface water services for the areas within its boundaries, those staff are managed as part of WES as well. The cost of shared employees is allocated as a real-time percentage, applied monthly, based on the total number of hours spent on CCSD#1 work versus TCSD work or SWMACC work. The current allocation, based on hours, is 65.50% for CCSD#1 sewer, 13.40% for CCSD#1 surface water, 20.65% TCSD (sewer only), and 0.45% for SWMACC (surface water only). The employees are managed by Clackamas County pursuant to an agreement, the most recent version of which was adopted in 2006 ("CCSD#1-County IGA", attached hereto as Attachment A), that allows the district access to support services in an a-la-carte, marginal cost approach that has consistently resulted in a very low overhead charge – substantially lower than the overhead charge levied by member cities on their own utility funds.

In the 1980s, small areas that were struggling to operate effective or efficient sewer service were subsequently annexed into CCSD#1, including Hoodland, Boring, and the Fisher's Forest Park mobile home site. Each of those areas has their own water quality permit. The Hoodland area is served by the Hoodland Plant, which has a permitted hydraulic capacity of 0.9

million gallons per day, and currently treats approximately 300,000 gallons per day. The Boring facility and Fisher's Forest Park are substantially smaller. During the same time period, failing septic systems serving two mobile home parks in the Carver area were also annexed into CCSD#1, which upon incorporation meant that CCSD#1 was serving a portion of the City of Damascus.

In 1997, the Kellogg Plant was reaching its maximum treatment capacity and experiencing Clean Water Act violations. The district needed to either increase the plant's capacity or offload some of its flow to come back into compliance and avoid a moratorium. In 1998-99, instead of increasing Kellogg's capacity (consistent with Milwaukie's stated long-term desire to have CCSD#1 decommission the plant), the district built a diversion pipeline for the area of the district east of I-205 and rented treatment capacity at the Tri-City Wastewater Treatment Plant ("Tri-City Plant"), diverting approximately 15 percent of CCSD#1's flow away from Kellogg. In 1999, CCSD#1 entered into an agreement with TCSD to rent that capacity at the Tri-City Plant, paying all associated costs plus a premium to TCSD (the "1999 Rental Agreement").

In 2006, the Kellogg Plant again began experiencing Clean Water Act and NPDES permit violations due to its aging condition and the fact that the plant had reached its maximum liquid capacity, even with the 15 percent diversion to the Tri-City Plant. To further complicate matters, TCSD indicated that it needed to use the 15 percent diversion capacity it was renting to CCSD#1 due to its own growth. CCSD#1 had to finalize a plan for capacity expansion or Kellogg's permit violations would only increase, leading to significant fines and a possible moratorium order from DEQ.

In late 2007, the BCC developed the Capacity Management Program ("CMP"), a multi-phase plan intended to address the urgent capacity problems. Under Phase 1 of the CMP, the District built the a high-technology MBR Facility, intertie pipelines between the MBR Facility and District customers, and conducted maintenance improvements at Kellogg. Engineering studies demonstrated that constructing the MBR Facility at the Tri-City Plant would be the lowest cost option for CCSD#1. The same studies demonstrated that the facility would significantly improve the Clean Water Act permit performance for the Tri-City Plant, have a lower cost for future liquid treatment expansion needs of either district, and result in the lowest overall cost to the region. In total, CCSD#1 expended approximately $136 million between the MBR Facility ($89 million), Interties 1 and 2, and a pump station to support the pipelines. The MBR Facility was overbuilt in Phase I to reduce the overall cost of expansion, including construction of full foundations and treatment bays for the next increment of needed liquids treatment capacity. CCSD#1 rates increased over a period of five years from $22 per equivalent dwelling unit ("EDU") retail to approximately $37 per EDU retail to pay for the debt associated with the Phase 1 program.

Representatives from CCSD#1's advisory board negotiated an agreement with TCSD regarding the permanent location of the MBR Facility at the Tri-City Plant (the "2008 Agreement", attached hereto as Attachment B), which superseded and terminated the 1999 Rental Agreement. In the 2008 Agreement, CCSD#1 leased the land the MBR Facility was to be located on through December 31, 2030, and paid $4,000,000 as rent for the land; use of the

existing infrastructure of the Tri-City Plant including but not limited to head works, pumps, connection lines, digesters, the outfall; the right to include wastewater treated by the MBR Facility under the Tri-City Permit (defined below); and a premium for the opportunity to lease the land and utilize the existing infrastructure. The MBR Facility, commonly referred to as Phase I of the CMP, came online in 2011.

History of Tri-City Service District:

Prior to formation of the Tri-City Service District, the City of Oregon City operated a sewage treatment plant, of which Gladstone was a partner, located along Highway 99E next to Clackamette Park, at the present location of the McDonalds. West Linn operated its own sewage treatment plants at two different sites that currently house TCSD pump stations. In 1977, the Oregon Department of Environmental Quality ("DEQ") issued a building moratorium for Oregon City and Gladstone for failing to appropriately maintain, operate and/or expand their existing treatment facility, and warned West Linn that it would face a similar restriction in two years if sewer treatment improvements were not made at its facilities.

The leadership of the cities at that time met and found that mutual investment in an economy-of-scale business such as wastewater treatment was the most economically viable response to the moratoriums. Rather than trying to coordinate each city proposing a general obligation bond to a vote as the source of funds for mutual investment, the idea of a service district was explored. Clackamas County signaled a willingness to facilitate a district, so an initial plan to form a service district including a substantial unincorporated area was proposed through the County and put to a vote, which failed. After additional consideration, the three cities proposed that the district cover only their incorporated areas and the County put the matter to a vote. Upon passage in 1980, TCSD was formed with the BCC to act as the governing body.

TCSD was then able to leverage that vote of support to obtain Clean Water Act grants that paid approximately seventy-five percent of the construction costs of the Tri-City Plant. The remainder of the construction costs, approximately $25 million, needed to be a local contribution. In lieu of direct rates, city bonding, or rate bonds, TCSD was able to issue a general obligation bonds that crossed the three cities' jurisdictional boundaries. This construction bond was fully paid off in 2003 and no replacement bond was sought. Since TCSD's inception in 1980, direct user rates have paid only for operational expenses and minor asset replacement. Therefore, TCSD boasts by far the lowest wholesale sewer rate in the Metro region. The bond and grant money was also used to decommission the existing city sewer plants and construct interceptor sewers.

The Tri-City Plant construction was completed in 1986 and has been operating continuously since that time, discharging to the Willamette River pursuant to NPDES permit number 101168 (the "Tri-City Permit"). The Tri-City Plant has held sufficient capacity to support the steady growth of its member cities. Over the past 30 years, Gladstone has experienced relatively little growth, West Linn moderate growth, and Oregon City high growth. The Tri-City Plant is now beyond its maximum original design capacity for solids handling based on flows solely originating from TCSD ratepayers. Please see Attachment C for supporting information regarding capacity issues as already provided to the Regional Committee.

Upon formation of TCSD in 1986, the Department of Utilities (later renamed Water Environment Services) provided a common, dedicated pool of staff to support both districts at a lower cost than could be achieved if each went its separate way. This arrangement has been implemented for the last 30 years, and under it, TCSD is billed for the full cost of employees that support only TCSD activities, such as Tri-City Plant operators or mechanics, but share the cost of certain administrative positions such as director, water quality manager or finance manager, with CCSD#1 and SWMACC. The cost of shared employees is allocated as a real-time percentage, applied monthly, based on the total number of hours spent on TCSD work versus CCSD#1 work or SWMACC work. The current allocation, based on hours, is 65.50% for CCSD#1 sewer, 13.40% for CCSD#1 surface water, 20.65% TCSD (sewer only), and 0.45% for SWMACC (surface water only). The employees are managed by Clackamas County pursuant to an agreement, the most recent version of which was adopted in 2006 ("TCSD-County IGA," attached hereto as Attachment D) that allows the district access to support services in an a-la-carte, marginal cost approach that consistently has resulted in a very low overhead charge – substantially lower than the overhead charge levied by member cities on their own utility funds.

The initial investment in the Tri-City Plant gave TCSD an underutilized asset. Beginning in 1999, TCSD rented out its unused capacity to CCSD#1 for a profit under the 1999 Rental Agreement. By relying on that profit, TCSD was able to completely avoid rate increases in some years and maintain an overall a rate growth profile that was below inflation. However, in doing so, TCSD's revenue generated from ratepayers soon was insufficient to pay current operating costs. The revenue from the 1999 Rental Agreement ended in 2011 once the MBR Facility came online. Since 2011, TCSD rates have been climbing steadily in an effort to get the district back on sound financial footing. The district is now able to generate sufficient revenue to pay for its own operating costs without spending from reserves. At this time, TCSD has a very limited ability to issue minor amounts of rate-supported debt for capital projects. TCSD has never issued rate bonds and is not rated by the bond rating agencies.

Continued growth in all three cities, with Oregon City experiencing the highest rate of growth over the history of TCSD, has now consumed the original design capacity of the Tri-City Plant. As reported to the Regional Committee, even without any flows coming from CCSD#1 or the existence of the MBR Facility, TCSD would require investments in solids handling. Solids handling needs have matured earlier than liquids needs in part because of adoption of low-flow toilets and other water saving devices. The volume of wastewater has decreased per household, but there has been a concomitant increase in the concentration of the wastewater stream; systems originally designed to be in sync from a treatment perspective are now on a different capacity timeline. Construction of solids handling would have triggered heightened regulatory requirements that would have been very difficult for TCSD to meet, but for the existence of CCSD#1's MBR Facility. Under the current structure, when TCSD requires additional liquid treatment facilities, it will need to buy into CCSD#1's MBR Facility to allow for the lowest cost expansion.

Common History:

Since 1986, both districts have been jointly managed by WES. This arrangement has been utilized to minimize the expenses to ratepayers. In doing so, each district only has to pay a share of 107 full time employees that are available and would be necessary to support district operations. The result is a long history of the districts saving on operating and administrative expenses. However, at the time of formation, each had a separate pool of grants and rate-supported investments for capital infrastructure.

Beginning with the 1999 Rental Agreement and the construction of Intertie 1, the capital infrastructure of CCSD#1 was linked with that of TCSD. This resulted in a significantly increased return on investment for TCSD as more of the Tri-City Plant was utilized, and CCSD#1 avoided some capital costs for a period of time. However, this move meant that CCSD#1 fell behind in having the treatment infrastructure necessary to meet its ratepayer needs.

Recognizing the need for a long term solution and because TCSD required the use of the rented liquid treatment capacity, the CMP was developed to provide the lowest cost service to the ratepayers. With the 2008 Agreement and construction of the MBR Facility, CCSD#1 reached "capacity parity" with TCSD and the two districts were in equivalent places in terms of current and future infrastructure needs. Since 2011, when the MBR Facility came online, the two districts have shared proportionally in the operational costs of the Tri-City Plant. Each district has realized cost savings and efficiencies through this arrangement. This arrangement, however, deals only with operational cost sharing and does not address capital needs. Under the current structure, those issues are brought before the Regional Committee for consideration.

While operationally integrated, the capital components of the districts are only integrated on an ad hoc basis based on single-issue agreements, such as the Blue Heron investment. Each district is distinct financially and legally. This leads to an odd quasi-partnership that provides some cost savings, but creates uncertainty and challenges for long term strategic planning and project efforts. The below analysis examines whether there are greater benefits that could be realized by closer integration between CCSD#1 and TCSD. The analysis concludes that each district would save its ratepayers hundreds of millions of dollars by more closely working together.

2008 Committee Findings:

After discussions around the CMP and Phase I construction program, there was a recognition that, much like the current discussion, there could be substantial savings by the districts working together. The Board of County Commissioners chose to seek the input from the full range of stakeholders that could be affected by a decision regarding some kind of regionalization. A blue ribbon group, called the Community Partners Task Force, was formed, consisting of elected representatives from the Board of County Commissioners, Damascus, Gladstone, Happy Valley, Milwaukie, Oak Lodge Sanitary District, Oregon City, and West Linn, and appointed representatives for the business community and direct ratepayers from the

unincorporated area (collectively, the "Task Force").[1] Lake Oswego initially participated, but subsequently withdrew after realizing that its participation was premature given its relationship with the City of Portland's Tryon Creek plant. The Task Force began meeting in February 2008 and submitted a final recommendation in November 2008.

The Task Force discussions began by identifying common jurisdictional interests and examining potential regional savings that could result from a common capital investment approach. It explored several issues regarding wastewater treatment with an independent engineer-consultant. In its findings, the Task Force concluded (i) that there were compelling financial benefits to ratepayers by making collective investments across service district boundaries, (ii) that there was a model for regional equity and fairness that could be implemented, and (iii) a governance structure could be implemented to reasonably achieve the first two findings.

After excluding retail services to ensure an "apples to apples" comparison, the Task Force found that by working together the collective ratepayers would save between $314 million and $384 million over a 30 year period. Those figures do not include savings that would result from a shared regulatory strategy, but arise only from shared investment in infrastructure required for meeting asset replacement and growth needs. Staff considers these numbers to be the minimum savings that would result through Regionalization. The key factual supports for reaching those conclusions were both the overall cost savings projected and the rate profiles, based on engineering estimates that projected substantially lower rates for every district beginning no later than the 2014-15 fiscal year.

Regulatory Benefits

Each of the four facilities managed by CCSD#1 and the Tri-City Plant has a Clean Water Act-authorized National Pollution Discharge Elimination System ("NPDES") permit that establishes limits and parameters for discharges into the waters of the United States. Within this paper, staff will focus on the Kellogg NPDES permit, the Tri-City NPDES permit, and the Blue Heron NPDES permit recently acquired jointly by the districts (together, the "Permits").

Regulators such as the Oregon Department of Environmental Quality ("DEQ") and the Environmental Protection Agency ("EPA") continue to promulgate rules that increase restrictions and/or requirements on dischargers. The Permits are covered by what is known colloquially as the "anti-backsliding rule," which means that regulations only get tighter. DEQ uses water quality standards to assess whether the quality of Oregon's rivers and lakes are adequate for fish and other aquatic life, human recreation, a source for safe drinking water, agriculture, industry

[1] The Committee Members were: Chair Greg DeGrazia, business representative; Deborah Barnes, Milwaukie City Counselor; Scott Burgess, West Linn City Counselor; Wade Byers, Gladstone Mayor; Charmaine Coleman, CCSD#1 ratepayer; Markley Drake, Happy Valley Counselor; Julie Harvey, CCSD#1 ratepayer; John Hickey, JD, PE, business representative; Kristin Johnson, Lake Oswego Counselor; Jim Knapp, CCSD#1 Advisory Committee Chair; David Marks, business representative; Alice Norris, Oregon City Mayor; Ernie Platt, Homebuilders' Association representative; Paul Savas, Oak Lodge Sanitary Director; and Randy Shannon, Damascus Counselor.

and other beneficial uses. DEQ also uses the standards as regulatory tools to prevent pollution of the state's waterways. The Clean Water Act requires all states to adopt water quality standards designating beneficial uses of the state's waters and sets criteria designed to protect those uses. The Clean Water Act requires wastewater treatment facilities, and any other dischargers into the waters of the United States, to operate under NPDES permits, which set limits on what can be discharged, based on water quality standards promulgated for that specific discharge area. In addition, each plant has separate biosolids programs and industrial pretreatment programs, which also result in separate requirements for each district based upon the receiving stream capacity.

It is important to emphasize the significant regulatory drivers for the business of the districts. The Clean Water Act has a complex process for establishing and imposing regulatory requirements on “point sources,” such as treatment plants, and substantial fines for violations. The regulatory process, in summary form, is that a water quality standard is developed by identifying the beneficial uses sensitive to the particular pollutant and then establishing a parameter. Specific criteria are then established based on the levels needed to protect the sensitive beneficial uses. For example, the uses typically most sensitive to dissolved oxygen are fish and aquatic life. Fish and other aquatic organisms need an adequate supply of oxygen in the water to be healthy and productive. In this case, the criteria identify the minimum amounts of dissolved oxygen that need to be in the water to protect the fish or other aquatic life. In other cases, as with many of the toxic pollutants, the criteria may identify the maximum amount that may be in the water without risk to human health or the aquatic biota. For other parameters, such as bacteria or some toxic compounds, human health is almost exclusively the most sensitive beneficial use. An analysis of each potential pollutant that could be discharged into the Willamette River and its watershed, in the case of the Permits, is made to determine the maximum that can be discharged to the river as a whole and by each permitted dischargee. DEQ then builds those limits into its NPDES permitting regime, ensuring that at both an individual facility level and watershed-wide the beneficial uses are protected.

The State of Oregon has a requirement to continually update their water quality standards, which are becoming amongst the most challenging in the country, to provide for beneficial use of the State’s water ways. The Districts continues to face increasingly stringent regulations, which likely will impact the technology needed to remove such pollutants if current treatment will not treat to the appropriate levels.

One of the difficulties in meeting current water quality standards is that the existing treatment infrastructure was designed to the lower standards that existed at the time of their construction. Several improvements have had to be made to both the Kellogg Plant and the Tri-City Plant to meet current water quality standards. This is exacerbated by the current rule structure that imposes even more stringent standards every time a treatment facility undertakes major improvements. For example, the Tri-City Plant's NPDES permit shifted from a “20/20” permit to a “10/10” NPDES permit, reducing in half certain allocations and pollutant discharge limits. Fortunately, the MBR Facility generated a high enough quality effluent that, when mixed with the lower-quality conventional treatment system used for the remainder of the plant flows, was more than sufficient to meet the enhanced compliance point requirements. There is a high likelihood that continued and even greater reliance on the MBR Facility will be necessary for effluent at the Tri-City Plant to meet the requirements of the Clean Water Act.

New standards can be imposed without the triggering requirement of additional construction that can necessitate additional investment or operational changes at the treatment plants. New technology, testing, analysis, and environmental studies can define new pollutants of concern. For example, Senate Bill 737, which passed in the 2007 session, required DEQ to develop a list of all priority persistent bioaccumulative toxics (the “Priority Persistent Pollutant List”) that have a documented effect on human health, wildlife and aquatic life. The bill also required fifty-two of the largest municipal wastewater plants (including the Kellogg Plant and Tri-City Plant) to pay a fee between $10-$20,000 over two years to fund the research behind the Prior Persistent Pollutant List, and draw samples of each major treatment facility’s effluent to identify whether they had any of the toxics of concern. If any were identified, the facility had some come up with a strategy to deal with them by 2011. Fortunately, the studies found that the only toxics found in the two major treatment plants’ waste streams during sampling were primarily byproducts of human digestion, and DEQ deferred the requirement for the strategy to be submitted pending additional discussion and review. Similarly, the EPA's Office of Science is continually researching the environmental impacts of existing or new products or issues in an effort to provide the scientific support for any additional regulations that may be required.

In the near term, staff anticipated that both the Tri-City Plant and Kellogg Plant will be dealing with compliance challenges arising from several existing discharge limitations, including: (i) temperature, (ii) ammonia, (iii) biological oxygen demand (“BOD”) loading, (iv) total suspended solids (“TSS”) loading, and (v) copper. Some arise from additional connections to the systems, while others are likely to become issues because of decreased allowances for existing discharges. In addition to anticipated problems in existing discharge limitations, staff also anticipates that some or all of the following “pollutants” may be added as new limitations within the NPDES Permits in the next several years: mercury, cadmium, silver, zinc, nickel, lead, and chromium.

In complying with the NPDES permits and associated regulatory structure, the districts currently achieve some costs savings by sharing staff to perform tasks. However, they are separate districts, and accordingly WES must maintain a degree of separation to follow the individual permits and legal requirements. Additionally, technical analyses are required for each district as well. The districts must also have separate rules and regulations, which govern activities that may impact the collection system and treatment works. Hence, the department has separate accounting, reporting and administrative needs to meet permit requirements of each district.

The current system of administration and compliance meets the demands of the regulatory system, but is not the most efficient. However, the primary gains that could be experienced by the Districts through a cooperative partnership are not on the staff side, but on regulatory permit compliance efforts themselves through the utilization of a watershed-based permit.

Watershed Based Permitting

Watershed-based NPDES permitting is a process that emphasizes addressing all stressors within a hydrologically-defined drainage basin, rather than addressing individual pollutant sources on a discharge-by-discharge basis. Watershed-based permitting can encompass a variety of activities ranging from synchronizing permits within a basin to developing water quality-based effluent limits using a multiple discharger modeling analysis. The type of permitting activity will vary depending on the unique characteristics of the watershed and the sources of pollution impacting it. The ultimate goal of this effort is to develop and issue NPDES permits that better protect entire watersheds.

Having a watershed based permit would greatly benefit the districts in meeting their Clean Water Act obligations, potentially allowing the two Districts to combine their respective allocations so that trading of NPDES permit discharge allocations could occur, as long as the collective discharge would be below the combined allocation. For example, under the current permitting situation if there is a high flow event at the Tri-City Plant that leads to an exceedance on TSS allowed to be discharged, TCSD is fined under the Clean Water Act, which can result in fines of up to $50,000 per day per parameter within the NPDES Permit that is violated. It would not matter if the Kellogg Plant is substantially below the required TSS loadings because they are distinct permits. However, if there was a single watershed permit, then there would only be a fine if the total discharged from both plants exceeds the total amount allowed to be discharged by both plants. So in this hypothetical, there is no violation because the Kellogg Plant's available loading can be combined with the Tri-City Plant via a "trade" to result in compliance.

This is not a radical innovation, but rather an existing local fact. Our neighboring Washington County wastewater provider, Clean Water Services, uses a watershed-based integrated permit covering four treatment plants via a county service district model. Oregon DEQ states that a single watershed-based, integrated municipal permit does not reduce the requirements that were previously contained in separate permits. Instead, it provides a number of advantages and efficiencies in allowing for use of multiple parameters across permits to meet requirements, or even from sources external to the allocations of treatment facilities (such as generating temperature credits for discharges by creating shade on upstream tributaries within the watershed).

The single watershed –based permit would result in various benefits to the permitee and the permitting authority and the environment. One permit is easier to administer and implement for both entities. The integrated permit also provides an economy of scale for both permitee and the permitting authority in terms of resource use. Both organizations will be better able to focus their resources on the most critical problems, while the integrated permit provides a greater level of protection for the environment than what might have been realized under the current system of multiple permits.

Putting a watershed permit in place for the districts is the best available strategy for meeting the existing and anticipated regulatory challenges facing the current and future ratepayers at the lowest cost. A single parameter, such as temperature, can drive investments into the tens of millions of dollars and pooling regulatory allocation resources to most efficiently

meet those requirements makes the most sense from a professional management standpoint. This pooling of resources via a watershed permit can only be achieved if a single, regional entity holds and controls the NPDES permits for all involved facilities.

A regionalized, watershed permit approach would also create efficiencies in the solids disposal portion of the districts' business. Currently, solids that are generated in the treatment process are loaded onto trucks and applied to farm fields in either the Willamette Valley or eastern Oregon. Each field must be specifically authorized by DEQ for application of biosolids by a particular entity. Currently, solids generated at one district's plant cannot be applied at the fields approved for the other district. This leads to operational challenges and increased costs in disposal.

In summary, a single watershed-based permit obtained through Regionalization would allow the districts to achieve water quality goals in a more cost-effective and efficient manner. The districts would experience enhanced environmental results for the watershed where ratepayers live, work and play, as well as target and maximize the available resources to achieve the greatest service level and environmental results. Additionally, a single watershed-based permit would create administrative efficiencies and provide opportunities for water quality trading programs that could support non-point source contributions to watershed health and regulatory compliance.

Capital Benefits:

The Regional Committee was originally formed to consider the possibility of shared investment in capital projects for growth, given the strong likelihood that each district would substantially benefit from a shared investment strategy. It is an industry truism that wastewater treatment efficiencies can typically be realized by scale, which is why it was more cost effective to decommission the three treatment plants serving Gladstone, Oregon City and West Linn and combine them into the Tri-City Plant. Washington County's Clean Water Services decommissioned twenty-six treatment plants and consolidated them into four facilities. Growth is only one component of the overall capital program each district must implement. Staff has evaluated each type of major capital project for the districts to determine whether or not a permanent partnership would have material benefits: regulatory investments, asset replacement, and growth infrastructure. In all three areas of investment, we anticipate that each district's ratepayers would realize hundreds of millions of dollars of savings through a regionalized capital investment strategy.

Regulatory Compliance. With respect to regulatory compliance, as noted in the Regulatory Benefit section above, each district is faced with the high likelihood of required investment to meet heightened discharge limitations. The plethora of new and enhanced regulatory requirements that may be imposed on the treatment plants are projected to require tens to hundreds of millions of dollars of additional investment. Regionalization, as an approach to capital investment, is the operative theory behind several programs currently being implemented by WES staff. TCSD is able to rely on and utilize the high quality effluent treatment of the MBR Facility to meet permit requirements, and CCSD#1 will be able to rely on and utilize the superior

Blue Heron outfall, of which it is co-owner, that is scheduled to be connected to the Tri-City Plant.

An example of how shared investment in assets can improve regulatory compliance can be found during the negotiations over the Tri-City Plant's currently-issued NPDES permit. DEQ's initial draft of the permit included a discharge limit for ammonia, a notoriously difficult parameter to treat for – the typical strategy is called nitrification, and requires the treatment plant's conventional treatment systems for liquids to be reduced to approximately 60% of its design capacity. This would have triggered a requirement that TCSD construct a new conventional treatment train for liquids at the costs of tens of millions, including early remediation of the Rossman landfill space. However, the improved performance from the MBR Facility was sufficient to give rise to an argument that with a minor investment in the outfall and assurances that future expansions in liquid treatment at the Tri-City Plant would be via CCSD#1's MBR Facility, no ammonia limit needed to be included. Staff was able to negotiate an order with DEQ that kept the term out of the NPDES permit (thus avoiding the anti-backsliding rule) and make an investment of only $300,000 in improved outfall configuration to make regulatory compliance under the appropriate analysis. TCSD would have faced a large capital cost to serve only existing customers if not for the MBR Facility and shared investment in outfall improvements.

Mutual investment made by each CCSD#1 and TCSD in the Blue Heron NPDES permit and outfall (previously held by the now-liquidated Blue Heron Paper Company) were a strategic approach to meeting temperature discharge restrictions being imposed on the Tri-City Plant and Kellogg Plant and also has the potential to save each district significant monies. The initial design and planning estimate of the cost to implement the Blue Heron permit approach is approximately $40 million, while the non-Blue Heron alternative of constructed wetlands is estimated to cost approximately $120 million and have a significantly higher annual operating cost.

Therefore, Regionalization not only would allow realization of cost avoidance in the operation and performance of the treatment plants, but also in any required investments needed to meet regulatory requirements. This would greatly reduce costs to serve current customers, let alone future connections. A co-investment strategy for regulatory compliance has already been implemented by the districts on an ad-hoc basis, and all available evidence suggests that savings in the hundreds of millions of dollars would result in a combined investment strategy.

Asset Replacement. Asset replacement is anticipated to become the largest capital cost for the districts over the next few decades, as the initial investments from the 1970s and 1980s wear out. This is of significant concern, as both districts' major assets are nearing the projected end of their useful life; both the Kellogg Plant and Tri-City Plant's original assets are fully depreciated. Staff is developing an asset management program to implement the necessary tools, processes and procedures necessary to make the best decisions about the repair and replacement of existing assets. This program will assist in predicting and best managing the anticipated high cost of asset replacement.

Prioritizing and optimizing the reinvestment strategy across a regional system is the lowest cost option. Through WES, the districts currently benefit through shared maintenance crews, as well as a staff of engineers and inspectors, who ensure that projects are done per spec and at the lowest possible cost that meets operational needs. Regionalizing asset replacements efforts would enhance this productivity while providing the lowest cost provision of this crucial investment.

Growth. The Regional Committee has already received presentations on the savings that are anticipated through joint investment to meet the needs of growth. The districts are anticipated to save nearly $120 million by working together to solve the solids handling capacity issue, as an example. Staff notes that the districts have reached "capacity parity" at this time, in that they are faced with similar needs in similar timelines going forward from a service level standpoint. Each district is uniquely positioned to address a particular regional need - TCSD is better situated to address solids handling and CCSD#1 is better situated to address liquids handling. Together, each district would save at least of millions by working collaboratively on this area of capital investment with one another than they would alone.

Another benefit of a partnership would be to share in the combined benefit of adding new ratepayers to the existing system. As new connections join, WES charges both a system development charge to recover costs for newly-constructed infrastructure, as well as a connection charge. These new connections in essence become partners in an ongoing enterprise, with equal responsibility for paying for regulatory-driven investment or asset replacement for assets whose useful life was exhausted prior to their connection to the system. This spreads the cost of regulatory and asset replacement costs across a broader base, reducing the per-household charges for the existing ratepayers. Both CCSD#1 and TCSD broaden their individual ratepayer base by operating together, which allows for a lower overall cost for the provision of wastewater services.

Overall, multiple studies and examination from an engineering and service level perspective undertaken by the districts consistently show that the ratepayers of each district would save tens to hundreds of millions of dollars through Regionalization. That idea has driven investments since the 1990s and remains even truer today as the regulatory environment becomes ever more restrictive and the needs of asset replacement become the dominant capital requirements for both districts. Regionalizing infrastructure investment to provide for the projected capital needs of both districts would save hundreds of millions of dollars over the next few decades.

Governance Benefits:

Currently, the Board of County Commissioners ("BCC") serves as the governing body of each of CCSD#1 and TCSD. The BCC also has broad responsibilities for a wide range of other issues. WES supports seven different advisory committees, as well as briefings to and decisions by the BCC, for a total of eight, to ensure that the interests of ratepayers are being heard and reflected in decisions. Of those, six relate to the Districts. This leads to a multitude of sometimes

inconsistent voices coming to the governing body. A more unified decision-making process could reduce that number to two.

One of the material challenges facing each of the districts is a lack of certainty. The current status quo is that the districts work together to a limited extent from an operational standpoint, and may work together from a capital standpoint on some, but not all future projects. The question of whether or not the districts will work together is an ad hoc discussion for each project vetted through the appropriate advisory committees. This leads to difficulty in making long term plans to meet the needs of the districts. WES staff has tried to create the lowest-cost capital plan for regulatory investments, asset replacement and meeting the needs of growth, plans which are being reviewed and revised from a comprehensive perspective at this time. Often the lowest-cost approach requires an assumption that the two districts will work together on an investment. However, the ad hoc nature of decision-making for each investment places a barrier to reliance on those assumptions.

Regionalization would allow for the realization of the many cost-saving benefits anticipated in those future plans. It would enhance the stability of decision-making by allowing all affected stakeholders have a voice in all material decisions on a consistent basis. It would also reduce the amount of time and money spent supporting the eight current decision-making or advisory bodies. In having all the decision-makers together and obtaining certainty regarding co-investment, staff can better plan for future requirements, develop a consistent and reliable rate profile designed to levelize rate changes, optimize sequencing of efforts and more assuredly realize the tens of millions of dollars in savings projected by the two districts working together on a permanent basis.

Overall, the substantial intangible value of certainty would be a great aid in allowing staff to conceive, propose and ultimately implement the optimal lowest-cost management strategy for the infrastructure and services entrusted to them.

Administrative Benefits:

Currently, WES staff provides accounting and administrative services to the three independent districts of CCSD#1, SWMACC, and TCSD. Each of these districts are “municipal corporations” as defined by statute, requiring separate accounting and reporting. County service districts provide a way to localize the financing of services that benefit only specific areas, while retaining responsibility within county government rather than an independently elected board. The Board of Directors for each district is comprised by statute of the individuals who are elected as Clackamas County Commissioners.

The administration of the Districts is done by Clackamas County employees that are organizationally housed in WES. Because the affairs of all three districts are managed by WES employees simultaneously, complex accounting systems have been implemented to assure all costs are properly assigned to the correct district, including the allocation of many costs that are common to all three. Budgets and audits are prepared each year by WES for each district.

The principal driver for these discussions about Regionalizing the districts is efficiency and the potential advantage to ratepayers resulting from some form of combined services. The

purpose of this discussion is to look at whether the potential advantages of Regionalization translate into efficiencies and cost savings to ratepayers. The approach has been to develop a list of administrative costs the districts incur to deliver utility services and align them with future costs that could be avoided by merging the three Districts into one comprehensive utility service provider. This discussion should not be construed as a rate study. Itemized below are some of the administrative areas that would result in either lower-cost or more efficient provision of services under Regionalization:

- Accounting – Extensive resources are required to provide accurate and reliable cost accounting to all three districts. Investments and expenses may be the responsibility of one, two, or all three districts. In the cases of more than one district, allocations vary from agreed on amounts to percentage splits to those based on actual direct labor charges of the districts. This adds in turn to the number of journal entries and complicated tracking arrangements. Vehicle and equipment usage becomes complicated when they are shared between districts. Significant reductions in cost accounting related to all of the issues noted could be achieved under a combined entity with a combined monthly service rate.

- Agreements – Agreements are required whenever assets are shared between districts. This in turn requires briefings to advisory committees reflecting their separate interests, the creation of detailed IGAs by County Counsel, possible study sessions and ultimate adoption by the Board. One larger entity will not produce these issues whenever assets are used or co-located. This is important, as WES will continue to look for efficiencies through asset sharing.

- Borrowing Costs/Logistics – For the first time, a costly capital project (solids handling) needs to be undertaken by two of the districts simultaneously, requiring significant external funding. Under the current independent financing structure, each district will need to separately pursue extensive and complicated procedures to borrow funds sufficient to pay for their agreed upon portion of the project. The financial condition of TCSD is very different than that of CCSD#1, which may require very different approaches to that financing for each district. Even then, funding from both must be ready at the time the project starts. This will be a challenge that would be greatly reduced if done by a combined, financially stronger entity. One larger entity should be able to achieve a higher bond rating, reducing borrowing costs, as well as eliminate many of the risks noted here.

- Facilities planning and Asset Management – In most cases, facilities planning is currently done at the individual district level. This approach does not take advantage of the economies of scale that could be achieved by planning on a basin-wide, regional basis. Clean Water Services in Washington County has adopted this basin-wide planning strategy, resulting in the consolidation of twenty-six wastewater treatment plants in 1970 down to four treatment plants today. Asset management will be an even greater financial challenge than growth over the longer term. Even small efficiencies in this area will result in significant savings over time.

- Risk – Separate insurances are required for each district, with variations between each of them resulting in greater complexity in the management of risk. One larger entity should not only reduce overall insurance costs, but would reduce the complexity in its management.

Overall, the districts are experiencing some administrative savings already, therefore, the impact of Regionalization would be a limited improvement in terms of dollars. However, the unknowns around TCSD's ability to effectively enter into the municipal markets and the almost-certain reduced borrowing costs and interest rate savings from a Regionalized borrowing strategy

provide sufficient reason to find that there would be material administrative savings to the ratepayers of the districts.

Industry Trends:

Cities' roles are to oversee the care of basic services that the taxpayers require, such as education, parks and recreation, safety, and utilities. In reality, most cities do not handle all governmental services alone, or at least not easily. In order to deliver a service in a way that is most fiscally responsible, cities commonly work together with their neighbors to provide the same service for all parties involved, at a reduced cost for each contributor. Over time, these mutually beneficial relationships result in deep ties of co-invested programs, projects, and infrastructure. Specifically, in the realm of wastewater conveyance and treatment, the ties can become crucial to the overall economic and public health of an entire region. In Clackamas County, the collaboration of TCSD and CCSD#1 has resulted in substantial savings to date, with more possible with greater integration. In order to understand the relationship between the two districts, the fundamentals of public investment in infrastructure must first be examined. Below are some common questions that were reflected in industry literature that may be helpful to the Regional Committee:

What is the relationship between public investment in infrastructure and private investment?

In his 1990 report entitled "Why is infrastructure important?", David Alan Aschauer sought to determine the magnitude of impact that investment in infrastructure has on economic output and found that government investment in infrastructure has a far greater impact on private investment decisions than any other type of government expenditure. "Given that public capital complements private capital, an increase in the public capital stock can be expected to stimulate private capital through its effect on the profitability of private capital."[2]

What is the return on investment in public infrastructure?

In 2012, Isabelle Cohen, Thomas Freiling, and Eric Robinson at the College of William and Mary published a paper that attempted to understand the short- and long-term financial return generated by infrastructure investment. They found that, "In the short-run, spending on infrastructure produces twice as much economic activity as the level of initial spending. These effects are most heavily concentrated in the manufacturing and professional and business services sectors, but also accrue to smaller sectors like agriculture. In the long-run, spending on all types of infrastructure generates substantial permanent positive effects across the economy as

[2] Aschauer, David Alan, 1990. "Why is infrastructure important?" Conference Series; Federal Reserve Bank of Boston, p 21-68.

a whole. Money spent now will produce significant tax revenue returns to the government's budget over twenty years."[3]

Over the long term, they found that the results of public investment are amplified. In particular, the group determined that every $1 invested at the beginning of a 20 year period would yield $3.21 in GDP growth at the conclusion of the period. In addition, in the aggregate, $1 invested in infrastructure would generate almost $0.96 in new taxes over 20 years.

What impact does investment in water and sewer infrastructure have?

In 1995, researchers from the University of Oklahoma, Clarkson University, and Northern Illinois University analyzed the effects of investment in different infrastructure components individually and found a greater impact resulting from investment in water and sewer infrastructure than other types of infrastructure. Their report concluded that "aggregate public capital and two of its components (highways, water and sewer) make a positive contribution to state output. Water and sewer systems have a much larger effect on state output then highways and 'other' public capital stock."[4]

They further found that, "The implication is that additional investment in waste disposal and water systems offers a greater stimulant to the regional economy than increased public funding for highways. Also, willingness to facilitate the building of water and sewer infrastructure may allow states to maintain or enhance their competitive advantage in attracting new facilities and jobs." Businesses looking to establish themselves further in the area would be discouraged by a lack of treatment capacity, and may consider options in other parts of the region. Additionally, residents of the region do not specifically limit their day-to-day business within the political boundaries of each city or district; rather, they work, shop, and recreate freely across all of boundaries in each of the cities served by the districts.

A study by the U.S. Department of Agriculture looked at the impact of specific infrastructure investments made by the U.S. Department of Commerce, Economic Development Administration ("EDA") in 1989 and 1990 and found positive benefits from investment in water and sewer infrastructure where it helped businesses expand or locate in a community. "Water/sewer projects can save and/or create jobs, spur private sector investment, attract government funds, and enlarge the property tax base. The 87 water/sewer projects studied, on average, created 16 full-time-equivalent construction jobs. Direct beneficiaries (businesses) saved, on average, 212 permanent jobs, created 402 new permanent jobs, made private investments of $17.8 million, leveraged $2.1 million of public funds, and added $17.0 million to the local property tax base. Indirect beneficiaries saved, on average, 31 permanent jobs, created 172 new permanent jobs, attracted $3.34 million in private-sector investment, leveraged $905,000 of public funds, and added $3.0 million to the local property tax base. This enlarged

[3] Cohen, Isabelle, Freiling, Thomas, and Robinson, Eric, 2012, "The Economic Impact and Financing of Infrastructure Spending," Thomas Jefferson Program in Public Policy, College of William & Mary, for Associated Equipment Dealers.

[4] Moomaw, Ronald L. Mullen, John K. and Williams, Martin, 1995, "The Interregional Impact of Infrastructure Capital," *Southern Economic Journal*, Vol. 61, No. 3 (January), pp 830-845.

property tax base, at a mere 1-percent tax rate, would yield $200,000 in annual property tax to the community." In their work attempting to quantify the effects of financial investment in infrastructure, Cohen, Freiling, and Robinson at the College of William and Mary found that a $1 investment in a water and sewer project would yield $6.77 in GDP growth over a 20 year period. The same $1 would also generate $2.03 in new taxes over the same period, on average, of which $0.68 is new state and local tax revenue.

Would these same regional benefits to shared wastewater capacity infrastructure development apply in Clackamas County?

Yes. District-specific studies undertaken in the 1990s, 2000s, and 2010s all demonstrate the substantial savings that emerge from a more integrated, economy-of-scale system apply in the case of both districts. There is little doubt that the ratepayers of the districts would be best served by a long term, consistent cooperative approach between the districts.

Conclusion:

Overall, a staff review of the issues, opportunities and challenges facing each of CCSD#1 and TCSD found that ratepayers stand to save hundreds of millions of dollars through Regionalization. The greatest benefits are realized in collectively meeting regulatory requirements for current services, and allowing for the least-cost capital investment strategy to meet regulatory, asset replacement, and growth needs. There are smaller, but tangible benefits that emerge in the arenas of administration and governance, resulting in a more streamlined organization that is efficient and effective. In particular, the introduction of certainty for a long term investment strategy, and improved transparency and collaborative opportunities are significant positives. In totality, Regionalization is consistent with the trajectory of the two districts' relationship over the past two decades and results in savings by all ratepayers on the order of hundreds of millions of dollars.