

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: Oregon Water Resources Contract

<p>Background:</p> <p>Beginning in July, 2017, the County has contributed funding to the Oregon Water Resources Department to provide staffing for the Milton-Freewater area. The amount of funding has been \$100,000 per fiscal year. The same amount of funding is proposed for the 2019-20 fiscal year. The intergovernmental agreement with the department for the funding is before the Board for approval.</p>	<p>Requested Action:</p> <p>Approve agreement with OWRD and authorize chair to sign.</p>
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ATTACHMENTS: Proposed IGA

\*\*\*\*\*For Internal Use Only\*\*\*\*\*

Checkoffs:

- ( ) Dept. Heard (copy)
- ( ) Human Resources (copy)
- ( ) Fiscal
- ( X ) Legal (copy)
- ( ) (Other - List:)

To be notified of Meeting:

Needed at Meeting:

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Scheduled for meeting on: May 15, 2019

Action taken:

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Follow-up:

## INTERGOVERNMENTAL AGREEMENT

This agreement is between the **Oregon Water Resources Department**, (hereafter called the "Department") and **Umatilla County**, (hereafter called the "County"). The purpose of this Agreement is to fund the costs of one Assistant Watermaster to perform work in that portion of Umatilla County that is in the Walla Walla Sub-basin of the Umatilla Basin. These costs include but are not limited to salary, benefits and other payroll expenses (OPE), supplies, and I/T services.

1. Term of Agreement

The period of this agreement shall be from **July 1, 2019** to **June 30, 2020**.

2. Statement of Work

The Department agrees to provide watermaster services, hereby referred to as Work and generally described in ORS Chapter 540.045 and related Oregon Administrative Rules which services are specifically provided by the Assistant Watermaster for the Umatilla River basin.

3. Consideration

The Department shall bill County a total amount of **\$100,000.00** for performance of this agreement. Invoicing and payment details are specified in Exhibit A.

4. Subcontracts

The Department may enter into subcontracts for any of the work scheduled under this agreement without obtaining prior written approval from the County.

5. Amendments

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

6. Termination

A. This agreement may be terminated by mutual consent of both parties.

B. The Department may terminate this agreement effective upon delivery of written notice to the County, or at such other date as may be established by

the Department under any of the following conditions:

1. If the Department funding is not secured and continued at levels sufficient to allow for the continuation of the assistant watermaster program, when possible, and when agreed upon, the contract may be modified to accommodate a reduction in funds.
2. If federal or state regulations or guidelines are modified or changed in such a way that the services are no longer allowable or appropriate for purchase under the agreement.
3. If the County fails to provide funds as specified herein, or so fails to comply with other provisions of this agreement to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from the Department, fails to correct such failures within thirty (30) days or such longer period as the Department may authorize.

7. Funds Available and Authorized

The County certifies at the time the agreement is approved that sufficient funds are available and authorized for expenditure to finance costs of this Agreement with the County's current appropriation and limitation.

8. Captions

The captions or headings in this agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this agreement.

9. Representations and Warranties

Department has the skill and knowledge possessed by well-informed members of its industry, trade and profession and Department will apply that skill and knowledge with care and diligence to perform Services in a professional manner and in accordance with standards prevalent in Department's industry, trade or profession.

10. Indemnity

EACH PARTY SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE OTHER PARTY AND THE OTHER PARTY'S AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS"), INCLUDING ATTORNEY FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY'S OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT. ANY INDEMNITY BY THE DEPARTMENT UNDER THIS SECTION SHALL BE SUBJECT TO THE LIMITATIONS OF ARTICLE XI, SECTION 7, OF THE OREGON CONSTITUTION AND THE OREGON TORT CLAIMS ACT, ORS 30.260 TO 30.300. ANY INDEMNITY BY THE COUNTY UNDER THIS SECTION SHALL BE SUBJECT TO THE LIMITATIONS OF ARTICLE XI, SECTION 10, OF THE OREGON CONSTITUTION AND THE OREGON TORT CLAIMS ACT, ORS 30.260 TO 30.300.

11. Access to Records

The Department, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records not otherwise privileged under law which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcript.

12. Nondiscrimination

The parties each agree to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

13. Merger Clause

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified wherein regarding this agreement. The county, by the signature below of its authorized representative, hereby acknowledges to have read this agreement, understands it and agrees to be bound by its terms and conditions.

14. County Data

Project Officer: John Shafer  
Organization: **Umatilla County**  
Address: 216 SE 4<sup>th</sup> Street  
Pendleton, OR 97801  
Phone: 541-278-6201 \_\_\_\_\_

15. Department Data

Project Officer: **Mike Ladd** \_\_\_\_\_  
Organization: Oregon Water Resources Department  
Address: 116 SE Dorion Ave  
Pendleton, OR 97801  
Phone: 541- 278-5456

16. Signatures

County: \_\_\_\_\_ / \_\_\_\_\_  
Signature Date

Title: Chair, Board of Commissioners  
Address: 216 SE 4<sup>th</sup> Street  
Pendleton, OR 97801

Department: \_\_\_\_\_ / \_\_\_\_\_  
Signature Date

**Lisa Snyder**, Interim Administrator  
Administrative Services Division  
Oregon Water Resources Department  
725 Summer Street NE  
Suite A  
Salem, OR 97301-1271

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## EXHIBIT A

County: Umatilla County,

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- a. Payment for all work performed under this contract shall be subject to the provisions of ORS 293.462 and shall not exceed the maximum sum of **\$100,000.00** including any travel and other expense reimbursement. .

Both parties acknowledge that other agreements may exist under the Assistant Watermaster program but such agreements are separate to this Agreement.

- b. Department

The Department shall perform work that includes:

1. Research and interpret water rights; court decrees; well logs; Oregon Revised Statutes; Oregon Administrative Rules; legal descriptions for ownership records; and historical hydrologic data for public, private agencies, water users and governmental groups such as tribal, local, state and federal agencies to facilitate water resource management activities in Watermaster District 5 to assure compliance with Oregon State water law.
2. Perform field flow measurements (wading, cable way, bridge crane) of waterways including streams, rivers, irrigation canals and ditches, utilizing hydrologic data instruments such as Flow Trackers, AA Price or Pygmy Current meters to calculate the amount of water and to establish the relationship between flow elevation and quantity.
3. Conduct maintenance and operation of waterway gaging stations. Examine and record electronic and manual gaging equipment data to provide a continuous record of water availability at specific sites for daily and emergency management and distribution of water resources.
4. Utilize flow measurements and gaging station data to determine water availability for development and promotion of water management actions. Read flow meters and perform static water level measurements in wells.
5. Resolve problems associated with water distribution, dam safety and well construction sometimes under emergency, hostile and/or dangerous conditions.
6. Interact with and inform agencies, groups and individuals in a public forum, to promote public relations and beneficial water management practices using Oregon Revised Statutes and WRD policies and programs.

7. Distribute available water during times of shortage according to relative priority dates of water right holders, Water Resource Department (WRD) policies and procedures.
8. Daily documentation of activities and violations observed in the field and initiate appropriate enforcement action in compliance with Oregon State Water Laws.
9. Testify during legal proceedings in support of enforcement or other water related issues.
10. Conduct water development loan, dam safety, and well construction inspections.
11. Conduct surveys of surface and groundwater measurement devices to monitor water use and availability. Enforce appropriate state statutes to ensure compliance.
12. Compile and organize data in report form for the public and/or governmental agencies.
13. Assist in updating and development of water management plans.
14. Responsible for maintenance and updating records of water rights and well logs.
15. Select sites, assist in and supervise the construction of headgates, flow meters and measurement devices.
16. Send quarterly invoices for the total agreement amount of \$100,000.00 to the County.

The invoicing schedules shall be as follows:

Invoice Date	Invoice Period	Invoice Amount
July 1, 2019	July – September 2019	\$25,000.00
October 1, 2019	October – December 2019	\$25,000.00
January 1, 2020	January – March 2020	\$25,000.00
April 1, 2019	April – June 2020	\$25,000.00
<b>Total</b>		<b>\$100,000.00</b>

c. Umatilla County

County shall fund the Assistant Watermaster for the Walla Walla Sub-basin of the Umatilla Basin, for the Milton-Freewater area. Upon receiving an invoice from the Department, County shall pay such invoice within 30 days. The Department shall perform the work as described above.

d. Deliverables

Within 90 days of the termination of this agreement, the Department shall present a summary of the activities and accomplishments during the period of the Agreement.