# INTERLOCAL AGREEMENT BETWEEN THE CITY OF RIDGEFIELD AND CLARK REGIONAL WASTEWATER DISTRICT

#### FOR PAVEMENT RESTORATION

THIS IS AN INTERLOCAL AGREEMENT for 'Pavement Restoration', entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between the Clark Regional Wastewater District, a special purpose District providing wastewater services within Clark County, Washington (the "District"), and the City of Ridgefield, a municipal corporation and charter city of the second class in the State of Washington (the "City").

WHEREAS, pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government functions or services which each is by law authorized to perform; and

WHEREAS, the District is planning construction of the Discovery Corridor Wastewater Transmission System Phase 1 (DCWTS PHASE 1), portions of which are located on S. 56<sup>th</sup> Place within the City, and the City is planning the construction of the South 56<sup>th</sup> Place Pavement Restoration Project within the same roadway; and

WHEREAS, it is in the public interest for the City and the District to include the pavement restoration Work in the District's Project;

NOW, THEREFORE, pursuant to RCW 39.34 and in consideration of the terms, conditions, covenants, and performances contained herein, as well as the attached Exhibits which

are incorporated and made a part hereof,

#### The parties agree as follows:

- PURPOSE. The purpose of this Agreement is to facilitate the design and construction of the City's planned pavement restoration by the District and the District's duly-authorized contractors on behalf of the City in an area where the District is planning the construction of the DCWTS PHASE 1.
- RECITALS ADOPTED. The recitals set forth above are hereby adopted as the factual basis for this Agreement.
- 3. DEFINITIONS. Unless otherwise indicated in the text of this Agreement, the following terms are defined as set forth below:
  - "Agreement" means this document and its terms, conditions, covenants, and performances contained, as well as the attached Exhibits, which are incorporated herein and made a part hereof.

"District Project" means a project specified in a bid package generated by the District for the purpose of hiring a contractor to construct the DCWTS PHASE 1 in S 56<sup>th</sup> Place and S 6<sup>th</sup> Way. This Agreement anticipates that the District Project will also include City Work, which consists of City pavement restoration as shown on Exhibit A, DCWTS Drawings PL-R05 through PL-R07, attached hereto and incorporated by this reference. The bid package shall include all drawings, specifications, documents, estimates, paperwork, bid forms, and bid bonds relevant to the District Project.

"Default" means failure to meet the seven listed events of default in Section 1-08.10(1) of the 2012 Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, and specifically includes failure by the City to make payment according to the terms of this Agreement.

"Facilities" means equipment and structures installed within the scope of the City's Work as defined herein.

"Punch list" means a list of tasks to be completed in order for the City Work to be complete and accepted by the City.

"Work" means all survey, engineering, materials, equipment, labor, contract administration, construction inspection, and any other efforts to complete the City's new facilities as shown on Exhibit A, DCWTS PHASE 1 Drawings PL-R05 through PL-R07, attached hereto and incorporated by this reference.

"Working days" means Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

#### 4. RESPONSIBILITIES OF PARTIES.

- 4.1. The District is responsible to perform or to contract for performance of the Work as defined in this Agreement.
- 4.2. The City is responsible to pay the District as required under this Agreement for (1) the cost of the Work for the City facilities and (2) all new facilities included in the Work.
- 5. TERM. The term of this Agreement is from April 1, 2014 through May 31, 2017.

- 6. TERMINATION. Prior to award of the bid for any contracted portion of the Work, either party may choose to terminate this Agreement by notifying the other party in writing thirty (30) days prior to termination. The termination must be effective prior to the award of the bid. After award of the bid for any contracted portion of the Work, either party may terminate this Agreement only if the other party is in Default, as defined in Section 3.
  - 6.1. If either the District or the City terminates this Agreement, the City shall reimburse the District for all of the District's actual direct and related indirect expenses and costs, including design, survey, engineering work, mobilization, construction engineering, contract administration and overhead costs, incurred up to the date of termination associated with the City Work, as well as the cost of non-cancelable obligations, including any redesign, re-engineering or re-estimating, if necessary, to delete the Work, and contractor claims, if any, payable in accordance to Section 8. The District agrees to provide to the City all Work-related documents upon final payment by the City.
  - 6.2. Before or after paying reimbursement pursuant to Section 6.1, the City has the right to seek any and all remedies available at law, in contract or in equity, singly or in combination, in a court of competent jurisdiction.
- 7. EXTENSIONS. The term of this Agreement may be extended in one-year increments by mutual written agreement of both parties, up to a maximum of five (5) years, through May 31, 2022. The extension agreements shall be executed at least fifteen (15) days prior to the expiration of this Agreement or any extension. The designated agents of the parties, as provided for in Section 27, may adjust the scope and compensation levels of this Agreement, the District Project and the City Work to allow for inflationary projections, costs for new services and reduced costs from reductions in services, as long as the total amount of such

adjustments is equal to or less than seventeen thousand and eighty eight dollars (\$17,088.00). The General Manager of the District is authorized to approve and execute such one-year extensions without further authorization from the Board of Commissioners. The City Manager is authorized to approve and execute such one- year extensions without further authorization of the City Council.

#### 8. PLANS, SPECIFICATIONS AND BIDS.

- 8.1. The District, acting on behalf of the City, agrees to perform or contract for performance of the City facilities and City Work as shown on Exhibit A, DCWTS PHASE 1 Drawings PL-R05 through PL-R07, and in accordance with Special Provisions and Plans developed by the District with guidance from the City and City-provided information.
- 8.2. The Special Provisions and Plans shall define the construction requirements for the City facilities and City Work shown on the attached DCWTS PHASE 1 Drawings PL-R05 through PL-R07 (Exhibit A), per the City's Standard Specifications, and per the 2012 Washington State Standard Specifications for Road, Bridge, and Municipal Construction.
- 8.3. The District will incorporate the Plans and Special Provisions into the District Project in accordance with the City's requirements. The City agrees that it is solely responsible for ensuring that all City standards and requirements are set forth in the adopted Special Provisions and Plans, and that it has supplied the District with all applicable standards, codes, regulations, or any other requirements the City is obligated to meet.
- 8.4. The District will include the Work to construct the City facilities in the bid advertisement for the District's Project. The District will be the City's representative

during the advertisement and award period. When requested by the District, the City shall timely assist the District in answering bid questions and resolving any design issues related to the Work. All comments and clarifications related to the bidding process must go through the District. The District will provide the City with written notification of the bid price no later than two (2) days after the bid opening for all Work items for which the City is responsible. The City shall respond in writing to the District, stating its acceptance or rejection of the Work items, within two (2) working days of the written notification.

- 8.5. Should the City reject the bid Work items, the District shall delete those items from the District Project. The City agrees to reimburse the District for engineering costs and direct and related indirect costs incurred by the District for deleting the bid Work items from the District Project, and to pay such costs in accordance with Section 11 (Billing Method and Process).
- 9. CONSTRUCTION, INSPECTION, AND ACCEPTANCE.
  - 9.1. The District agrees to administer the Work on behalf of the City.
  - 9.2. All materials removed by the District shall be reclaimed or disposed of by the District and shall become the property of the District or the Contractor if so designated in the Special Provisions.
  - 9.3. All contact between the City and the District's contractor shall be through the District's representatives.
  - 9.4. The District shall promptly notify the City in writing when the Work is completed.
  - 9.5. Upon completion of the Work, and at the request of the City, the District will provide the

- City with inspection documentation, including but not limited to inspection reports, compaction test results and material submittals.
- 9.6. The City shall, within twenty (20) calendar days of being notified that the Work is completed: (a) deliver a written letter of acceptance to the District, or (b) deliver to the District a written explanation in punch list format detailing the reasons why the Work does not comply with the approved Plans and Special Provisions. The City agrees to work diligently and in good faith with the District to resolve any issues relating to the Work so as not to delay the District's Project. If issues raised by the City are resolved, the City agrees to deliver to the District the letter of acceptance.
- 9.7. If the City does not respond within twenty (20) calendar days as provided in Section 9.6, the Work and the administration thereof will be deemed accepted by the City, and the District shall be released from all future claims and demands.
- 9.8. Upon completion and acceptance of the Work pursuant to Sections 9.6 and 9.7, the City agrees that it shall be solely responsible for all future ownership, operation and maintenance costs of its facilities, without District liability or expense; provided, that the City shall not be responsible for any repair and maintenance costs that are the responsibility of the District's Contractor.
- 9.9. The District will prepare the final construction documentation, including the City Work, in general conformance with the District's construction practices. The District will maintain one set of plans as the official "as-built" set, then make notations in red of all plan revisions typically recorded per standard District practice. Once the City has accepted the Work per Sections 9.6 or 9.7, the District upon request by the City will provide one copy of the record drawings to the City.

10. COST OF WORK. The City agrees that it shall be responsible for the actual direct and related indirect costs of the Work, including but not limited to design, survey, engineering work, mobilization, construction engineering, and contract administration and overhead costs. The estimated cost of the Work is one hundred seventy thousand eight hundred and eighty dollars and zero cents (\$170,880.00) plus a 0.5% fee for construction services (totaling \$854.40) ("Cost Estimate"). An itemized estimate of the City's responsibility for costs for the Work to be performed by the District on behalf of the City is included in Exhibit B, DCWTS PHASE 1 Construction Cost Estimate (99% Design), attached hereto and incorporated by this reference. The parties agree that the Cost Estimate is provided only for informational purposes, and that the City's total financial responsibility may be more or less than the amount indicated in the Cost Estimate, dependent upon the actual costs of the Work.

#### 11. BILLING METHOD AND PROCESS.

- 11.1. Should the City fail to make payment according to the terms of this Agreement, the District shall have the right to terminate this Agreement, charging the City for the District's associated costs of termination including non-cancellable items, District costs resulting from a delay due to the termination, and unpaid contractor charges for the City's Work.
- 11.2. The City, in consideration of the Work to be done by the District, agrees to pay the District for the actual direct and related indirect cost of all Work for which the City is responsible, including design, survey, engineering work, mobilization, construction engineering, administration and overhead costs. The District shall invoice the City, providing with the invoice sufficient documentation and information to justify the costs. The City agrees to pay the District within thirty (30) calendar days of receipt of an

invoice; provided, that if the City disagrees with all or part of an invoice, the City shall notify the District of the disagreement within twenty (20) calendar days of receipt of an invoice. The notice shall include an explanation of the disagreement and supporting documentation and information, if any. The City shall pay all parts of an invoice that are not contested within the thirty-day period. The City shall pay a contested portion of an invoice within thirty (30) calendar days after the parties resolve the disagreement.

- 11.3. Billing for services will be quarterly prior to construction, and monthly after commencement of construction until the District Project is complete.
- 11.4. Payments that are not paid within the applicable periods in Section 11.2 shall be considered delinquent. Delinquent charges shall accrue interest from the date of delinquency until paid, at an interest rate of one percent (1%) per month, and shall be assessed a twenty-five dollar (\$25.00) late charge each month that the amount is delinquent.
- 11.5. Payments will be remitted to the following address:

Clark Regional Wastewater District Finance Department PO BOX 8979 Vancouver WA 98668-8979

#### 12. CHANGE IN WORK OR COST INCREASE.

12.1. <u>Increase in Cost:</u> If unforeseen conditions cause the estimate of the Work to exceed the Cost Estimate (including sales tax, engineering, and contingencies) as shown on Exhibit B by more than ten percent (10%), the District will notify the City of such increase within five (5) working days of the date the District receives information concerning such cost increase.

- 12.2. If the District desires to add to or change the Work, it shall give notice to the City, except as provided in Section 12.3 below. The City shall respond to the District request within five (5) working days of receipt of the request. The District cannot proceed with the addition or change to the Work unless the City approves the addition or change in writing. If the City fails to respond to the District's request, the City shall be deemed to have denied the request. The City agrees to pay all costs associated with any City-approved addition or change to the Work, as well as the costs of District Project or Work delays and/or District-approved contractor claims associated with the City's failure to respond timely.
- 12.3. When the District determines that a change in the Work is required to mitigate a District Project emergency or safety threat to the traveling public, the District will direct the change without the City's prior approval. The District will notify the City of such change and the basis for the emergency or safety threat as soon as possible thereafter.
- 12.4. The City may request in writing additions to the Work. If the District accepts the request, it shall notify the City in writing. The District will implement the requested changes as "elective changes," as long as the change does not negatively impact the District's wastewater system and complies with the Special Provisions, Plans, Standard Specifications, Project permits, applicable laws, rules and regulations, and/or District design policies, and does not unreasonably delay critically scheduled District Project activities.
- 12.5. The City agrees to pay for the increases in District Project cost, if any, for elective changes approved under Section 12.4 in accordance with Section 11 (Billing Method and Process).

- 12.6. The District will make available to the City all change order documentation related to the Work.
- 12.7. Any contractor request submitted to the District for permission to use different materials or structures for the Work or the City's facilities will be provided to the City for immediate review. The City will have five (5) working days to advise the District as to whether it accepts the different material or structure. If no response is made within the five (5) working days by the City, the District construction engineer will be allowed to make a determination on the City's behalf.
- 13. ADMINISTRATION/COMMUNICATIONS. Contract managers designated by the General Manager of the District and City Manager shall administer this Agreement, monitor service level and budget provisions of this Agreement, communicate via telephone or e-mail to relay information, answer questions, or raise concerns.
- 14. DISPUTE RESOLUTION. In the event of a dispute between the District and the City which cannot be resolved by the contract managers, the District General Manager and the City Manager or their designated representatives shall review such dispute and may attempt to resolve the dispute.
  - 14.1. Any controversy or claim arising out of or relating to this Agreement or the alleged breach of this Agreement that cannot be resolved by the District General Manager and the City Manager may be submitted to mediation. If the dispute is not resolved through mediation, it shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04A RCW.
  - 14.2. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree

that any such action or proceedings shall be brought in the Superior Court of Clark County, Washington. Each Party shall be responsible for its own attorney's fees and costs.

- 15. INDEPENDENT CONTRACTOR. Both Parties shall be deemed independent contractors for all purposes, and the employees of each party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. The District shall retain all authority for provision of services, standards of performance, discipline and control of personnel, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of the District an employee of the City or any employee of the City an employee of the District for any purpose, including but not limited to, withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.
- 16. HOLD HARMLESS/INDEMNIFICATION. To the extent authorized by law, the District and City shall indemnify and hold harmless one another and their employees, officers, contractors and agents, from and shall process and defend at their own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or cost, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement, provided, that if such claims are caused by or result from the concurrent negligence of (a) the District and (b) the City, their respective employees, officers, contractors or agents, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the District or the City, and provided further, that nothing

herein shall require the District or City to hold harmless or defend the other or its employees, officers, contractors or agents from any claims arising from that Party's sole negligence or that of its employees, officers, contractors or agents. The terms of this section shall survive the termination of this Agreement.

- 16.1. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against either party, each party retains the right to participate in said suit if any principle of public law is involved.
- 16.2. This indemnity and hold harmless provision shall include any claim made against either party by an employee, officer, contractor, subcontractor or agent of the other party, even if the other party is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the first party. Both parties specifically acknowledge that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that each party provide the other party with the broadest scope of indemnity permitted by RCW 4.24.115.
- 17. ATTORNEYS FEES AND COSTS. The parties shall bear their own costs of enforcing the rights and responsibilities under this Agreement.
- 18. NO THIRD PARTY BENEFICIARY. The District does not intend by this Agreement to assume any contractual obligations to anyone other than the City. The City does not intend by this Agreement to assume any contractual obligations to anyone other than the District. The District and City do not intend there be any third-party beneficiary to this Agreement.
- 19. NOTICE. Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

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To the City:

CITY OF RIDGEFIELD

P.O. Box 608

Ridgefield, Washington 98642

Attention: City Manager

To the District:

CLARK REGIONAL WASTEWATER DISTRICT

PO Box 8979

Vancouver, WA 98668-8979

Attention: General Manager

The name and address to which notices shall be directed may be changed by either party

giving the other notice of such change to the other as provided in this section.

20. WAIVER. No waiver by either party of any term or condition of this Agreement shall be

deemed or construed to constitute a waiver of any other term or condition or of any

subsequent breach, whether of the same or different provision.

21. INTERLOCAL COOPERATION ACT COMPLIANCE. This is an Agreement entered into

pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 1. Its duration is as

specified in Sections 5 (Term) and 7 (Extensions). Its method of termination is set forth in

Section 6. Its manner of financing and of establishing and maintaining a budget therefore is

described in Sections 10 (Cost of Work) and 11 (Billing Method and Process). No property

shall be acquired pursuant to this Agreement which will need to be disposed of upon partial

or complete termination of this Agreement.

22. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties with

respect to the subject matter covered or mentioned therein, and no prior Agreements shall be

effective to the contrary.

- 23. AMENDMENT. The provisions of this Agreement may be amended with the mutual consent of the parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both parties, except as provided in previous sections.
- 24. AUDIT AND RECORDS. During the progress of the Work and for a period of not less than three (3) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by the other Party, State of Washington, and/or Federal Government, and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim or audits are commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the three-year retention period.
- 25. DOCUMENT EXECUTION AND FILING. The District and the City agree that there shall be two (2) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of the District and the City. Upon execution, one executed original of this Agreement shall be retained by the Ridgefield City Clerk and one shall be retained by the District. The Ridgefield City Clerk shall cause a copy of this agreement to be posted on the City website pursuant to RCW 39.34.040. Upon execution of the originals and posting of a copy on the city's website, each such duplicate original shall constitute an agreement binding upon all parties. One each of the duplicate originals shall be distributed to the designated agents of the parties, named as follows:

Steven Wall, P.E. City of Ridgefield, Public Works Director P.O. Box 608 Vancouver, Washington 98642

J.D. Robin Krause, P.E. Clark Regional Wastewater District PO Box 8979 Vancouver, WA 98668-8979

- 26. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.
- 27. SEVERABILTY. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the District and City have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the  $24\frac{1}{2}$  day of April, 2014.

CLARK REGIONAL WASTEWATER DISTRICT

By: John Peterson, General Manager

CITY OF RIDGEFIELD, a municipal corporation

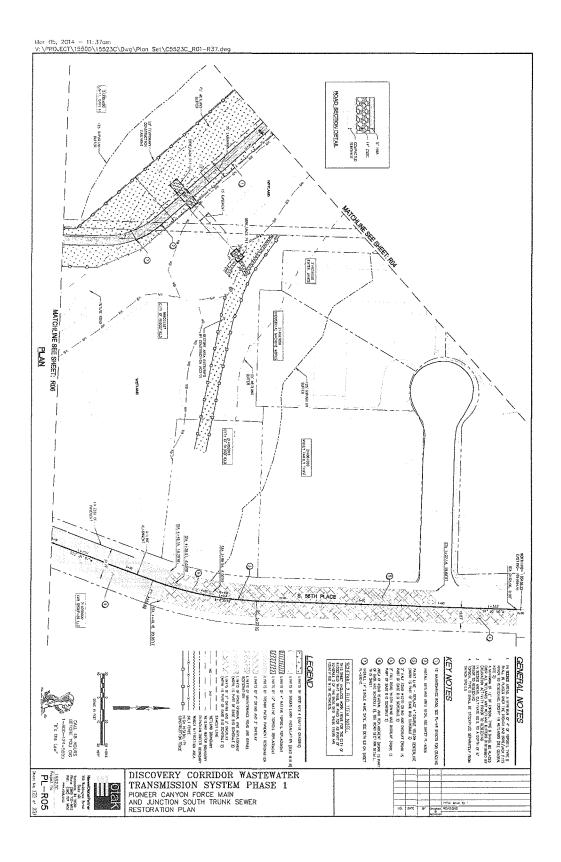
By: Steve Stuart, City Manager

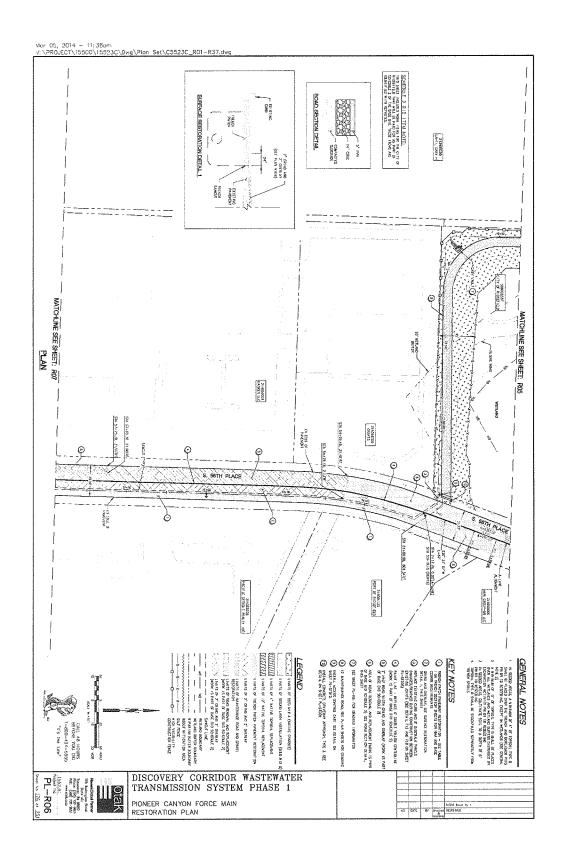
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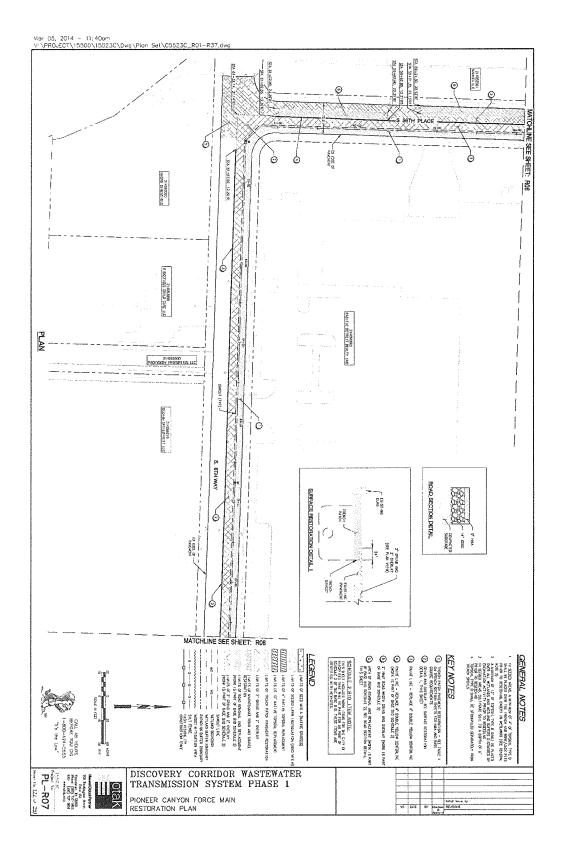
EXHIBIT "A": DCWTS PHASE 1 Drawings PL-R05 through PL-R07

EXHIBIT "B": DCWTS PHASE 1 CONSTRUCTION COST ESTIMATE (99% Design)

# EXHIBIT A DCWTS PHASE 1 Drawings PL–R05 through PL–R07







### EXHIBIT B

## DISCOVERY CORRIDOR WASTEWATER TRANSMISSION SYSTEM PHASE 1 CONSTRUCTION COST ESTIMATE - 99% DESIGN

ITEM	Bid Item ID No.	QUANTITY	UNIT	BID ITEM DESCRIPTION	UNIT PRICE	TOTAL
123	101.07	1	LS	MOBILIZATION (7%)*	\$11,200	\$11,200
124	110.02	240	HR	FLAGGERS AND SPOTTERS	\$47	\$11,280
125	110.01	1	LS	TRAFFIC CONTROL SUPERVISOR	\$5,000	\$5,000
126	203.01	1100	CY	ROADWAY EXCAVATION INGL. HAUL	\$11	\$12,100
127	203.02	100	ÇY	GRAVEL BORROW INCL. HAUL	\$15	\$1,500
128	404.02	750	CY	CRUSHED SURFACING BASE COURSE	\$30	\$22,500
129	504.02	1100	TON	HMA CL. 1/2 INCH PG 64-22	\$85	\$93,500
130 ·	504.30	4400	SY	PLANING BITUMINOUS PAVEMENT	\$3	\$13,200
131	822.01	1500	LF	PAINT LINE	\$0.4	\$600
TOTAL OF SCHEDULE 2 BASE BID ITEMS					LINED	\$170,880

#### Payne Pump Station

#### 1-02.14 Disqualification of Bidders

The Bidder shall have successfully completed projects within the past five years that have included the following scopes of work:

- Installed well-point dewatering system to lower groundwater in advance of excavation.
- Installed engineered shoring up to 30 feet deep.
- Installed shoring using non-vibratory equipment.
- Installed shoring within 25 feet of existing buildings.