

AGENDA ITEM FOR ADMINISTRATIVE MEETING () Discussion only
(X) Action

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: Ordinance Water Pipeline Project

<p>Background:</p> <p>The County acquired pumping capacity from the Columbia River. Westland Irrigation District is interested in acquiring an option to use a part of that capacity during the irrigation season. The option is before the Board for approval, along with associated agreements for acquiring the Westland crossing of canal, and use of Umatilla River through Westland facilities for recharge testing on the depot.</p>	<p>Requested Action:</p> <p>(1) Approve Option Agreement and authorize Chair to sign (2) Approve Assignment and authorize Chair to sign (3) Approve Agreement for Umatilla River Recharge Component and authorize Chair to sign</p>
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ATTACHMENTS: Proposed Option Agreement, Assignment, and Agreement

*****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:

Scheduled for meeting on: December 29, 2021

Action taken:

Follow-up:

OPTION AGREEMENT

THIS OPTION AGREEMENT (“Option Agreement”) is entered into by and between Umatilla County, a political subdivision of the State of Oregon (“County”), and Westland Irrigation District, an Oregon irrigation district organized and operated under ORS Chapter 545 (“Westland”), (collectively referred to as the “Parties”), on the date both Parties have signed this Option Agreement below (“Effective Date”).

RECITALS

A. County has acquired 30 cubic feet per second (“cfs”) of uninterruptible pumping capacity and 15 cfs of additional, interruptible pumping capacity at a Columbia River pump station located at:

Township	Range	Meridian	Section	¼ ¼	Lot	Location
5N	27E	Willamette	13	NW SW	4	POD located 2400 feet North and 330 feet East from the SW Corner, Section 13

B. County has an interest in constructing a ≥ 42 -inch mainline, and Columbia River pumping station capable of delivering a minimum of 45 cfs (the “Project Mainline”) to an area of the Umatilla Chemical Depot in the vicinity of the Westland Road/Interstate 82 interchange (“Project Point of Take-Off”).

C. County also has an interest in constructing an aquifer recharge basin in the area of the Umatilla Chemical Depot in the vicinity of Westland Road/Interstate 82 to conduct aquifer recharge testing and long-term operations in the Ordinance Alluvial Aquifer (“Project Recharge Component”). The County anticipates two phases of the Project Recharge Component. First, during “Project Recharge Component Testing,” the County will test recharge and will not be actively marketing stored water, resulting from recharge, to customers. And then second, during “Project Recharge Component Operations,” the County will have transitioned from recharge testing and will be actively marketing and selling stored water, resulting from recharge, to customers.

D. Westland has interest in securing 20 cfs of uninterruptible capacity plus 15 cfs of interruptible capacity from the Project Mainline, during the irrigation season (March 1 through October 31, 245 days). Prior to finalizing any financing package for the Project, Westland understands that it will need an agreement with one or more third parties to determine the amount and timing of available water that constitutes the 15 cfs of interruptible capacity from the Project Mainline. In addition, Westland has an interest in securing an additional 10 cfs of the uninterruptible capacity from the County during those irrigation seasons in which the County is not using that capacity for municipal and industrial (“M&I”) purposes.

E. Westland has interest in constructing and operating a +/- 42 inch water supply distribution system, beginning at the termination point of the Project Mainline (again, “Project Point of Take-Off”) and running along the Westland A-Line canal for delivery to Westland patrons (“Project Irrigation Component”).

F. Consistent with the above, Westland would like to deliver Columbia River water to its patrons, and to facilitate this, Westland in separate agreements is working to obtain an option to utilize certain interests in the Port of Umatilla's Columbia River mitigation water, as well as other mitigation water necessary to facilitate the diversion and use of the 20 cfs of uninterruptible capacity plus 15 cfs of interruptible capacity from the Project Mainline described above, as well as mitigation that would be necessary to facilitate the diversion and use of the 10 cfs of uninterruptible capacity from the County during those irrigation seasons in which the County is not using that capacity for M&I purposes.

G. Westland would like an option to lease from County, and County is willing to grant an option to lease to Westland, the 20 cfs of uninterruptible capacity, plus 15 cfs of interruptible capacity, plus the additional 10 cfs of uninterruptible capacity during those irrigation seasons in which the County is not using that capacity for M&I purposes, from the Columbia River pump station, as described in the Recitals above.

H. In August 2020, Westland paid the County \$45,000 as a good faith payment to reserve capacity in the Project Mainline from March 1 through October 31 of each year for delivery of irrigation water to its patrons and contractees, and including the delivery of water for Westland recharge projects to enhance or support irrigation water supplies. At the time of the payment, Westland and the County anticipated that the reservation of capacity was 30 cfs of uninterruptible capacity, plus 15 cfs of interruptible capacity.

I. The project has several components or phases that have been identified. Phase 1 includes the Columbia River pump station and construction of the pipeline to the edge of the depot; Phase 2 is the construction of the pipeline from the edge of the depot to the recharge site and other sites on the depot; Phase 3 is construction of a testing basin on the depot and a Umatilla River recharge line from Westland pond site to County testing basin on the depot. The phases may overlap and may be completed in different order.

J. The purpose of this agreement relates to Phase 1 and Phase 2, and is to grant an option to Westland to lease capacity within the pipeline constructed as part of these two phases.

NOW, THEREFORE, in consideration of the representations, covenants, and promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Option

A. Grant of Option. In consideration of the \$45,000 already paid by Westland to County and described in Recital H above, along with an additional payment of \$25,000 by Westland to County (the "Option Payment"), receipt of which is hereby acknowledged by County, County

hereby grants Westland an irrevocable exclusive option to lease 20 cfs of uninterruptible capacity, plus 15 cfs of interruptible capacity, plus the additional 10 cfs of uninterruptible capacity during those irrigation seasons in which the County is not using that capacity for M&I purposes, from the Columbia River pump station and the Project Mainline as described in the Recitals above (the "Option"). The 15 cfs of interruptible capacity may be sourced from Grimmway Farms, or from any other intake source, and may become uninterruptible depending on the intake source. The term of the lease shall be 99 years from the Effective Date of the Agreement to Lease Delivery Capacity ("Lease Agreement"), attached hereto as Exhibit A.

B. Term of Option. The term of the Option begins on the date of this Agreement and shall terminate 18 months from the date the County provides notice to Westland that Phase 1 has been completed.

C. Annual Payment. Westland agrees to pay County \$35,000 on the signing of this Option Agreement and annually on the anniversary of the date of this Option Agreement. Such payments shall continue annually and be due on the anniversary date until this Option Agreement is terminated or the Option is exercised. A credit of \$10,000 is granted to Westland so that the amount due on the signing of this Option Agreement is \$25,000.

D. Upon the Option Period becoming effective, the County consents to Westland negotiating directly with Grimmway Farms regarding the terms and conditions of the 15 cfs interruptible intake capacity described in the Recitals above. As set forth in the attached Exhibit A, this consent is provided in anticipation of the County assigning its right of first refusal to the 15 cfs interruptible supply granted by Grimmway Farms to Westland upon exercise of the Option by Westland.

E. Exercise of Option. The Option may be exercised by Westland at any time during the Option Period by Notice (as defined below) to County and payment to County of the first year payment under the Lease Agreement as negotiated between the Parties. Such Notice and payment shall be the sole means of exercising the Option during the term of the Option.

F. Funding. The construction of the pipeline in Phase 1, Phase 2 and Phase 3, is contingent on the County obtaining the funding for the construction of the phase. In the event, the pipeline is not constructed, annual payments made to the County under Paragraph 1(C) and the prior payment made to the County under Recital H will be refunded to Westland, and the County will re-assign and re-convey back to Westland the use of the U.S. Bureau of Reclamation-approved Crossing Agreement to cross the West Extension Irrigation District mainline canal.

2. Agreement to Lease Delivery Capacity

Upon exercise of the Option as described above, County and Westland shall enter into and execute the Lease Agreement, substantially in the form attached hereto and incorporated herein as Exhibit A, with the express understanding that the amount of the annual use payment provided for in Section 4 of the Lease Agreement is not yet determined. Rather, the Parties agree that at the time of Option exercise, they will negotiate in good faith to determine the exact amount of this annual use payment, such that the payment shall reflect a fair and reasonable cost

to County for Westland's use of the Project Mainline, over and above the Operations, Maintenance, and Mitigation water payments described in Section 10 of the Lease Agreement. .

3. General Provisions

A. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Option Agreement or the breach thereof, the Parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution after good faith efforts to resolve the issue, then, upon 30 days written notice by either Party to the other, all disputes, claims, questions, or differences shall be finally settled by binding arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

B. Severability. If any of the provisions contained in this Option Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Option Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

C. Force Majeure. No Party will be considered in default in the performance of its obligations under this Option Agreement to the extent that the performance of such obligation is prevented or delayed by any cause, existing or in the future, which is beyond the reasonable control of the affected Party, including, but not limited to Acts of God, earthquake, casualty, drought, labor disputes, civil commotion, war and the like. Obligations related to the payment of monies shall not be eliminated or delayed based on this Force Majeure provision, but shall continue unabated.

D. No Third-Party Beneficiaries. Westland and County are the only parties to this Option Agreement and are the only parties entitled to enforce its terms. Nothing in this Option Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.

E. No Agency or Partnership. Neither Westland nor County, nor the officers, employees, or agents of Westland or County, are, or shall be deemed to be, agents, partners, or joint venturers of or with the other. Both Westland and County are separately and exclusively responsible for acts, errors, and omissions of its own officers, employees, and agents except to the extent expressly provided otherwise in this Option Agreement.

F. Survival of Covenants. Any provision of this Option Agreement, which by its terms has or may have application after the expiration or earlier termination of this Option Agreement, including all covenants, warranties, and agreements, will be deemed to the extent of such application to survive the expiration or termination of this Option Agreement.

G. Rule of Construction. Westland and County hereby affirm that the terms of this Option Agreement were negotiated between the Parties and their respective legal counsel and shall not be construed against either Westland or County as a drafter of this Option Agreement.

H. Governing Law. The laws of Oregon shall govern this Option Agreement. Any disputes shall be resolved through the provisions of Section 3.A of this Option Agreement.

I. Entire Agreement. This Option Agreement embodies the entire agreement and understanding between the Parties hereto and supersedes all previous agreements and understandings between the Parties relating to Westland's option to lease pump and delivery capacity from County at the County's Columbia River pump station.

J. Counterparts. This Option Agreement may be executed in separate counterparts, which together will constitute an agreement between the Parties.

K. Notice. Notice shall be made by a written letter delivered by a Party to this Option Agreement to the other Party by both electronic mail and first class US mail to the appropriate individual listed below. Notice shall be deemed effective as of the date of the electronic mail so long as receipt is confirmed by the receiving Party with a reply electronic mail, or in any event, two days following mailing by first class US mail. The designated contact person for each Party is as follows:

District:
Curtis Engbretson
Westland Irrigation District
PO Box 944
Hermiston, Oregon 97838

County:
Chair, Board of Commissioners
Umatilla County
216 SE 4th Street
Pendleton, Oregon 97801

Email: curtis@westlandirrigation.com
Phone: (541) 667-2030

Email: doug.olsen@umatillacounty.net
Phone: (514) 276-7111

Either Party may change its respective contact person or address listed above by written Notice to the other Party.

L. Assignment. This Option Agreement may not be assigned, whether in whole or in part, without the consent of the other Party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the undersigned have caused this Option Agreement to be executed as of the ____ day of _____, 2021.

WESTLAND IRRIGATION DISTRICT
an Oregon Irrigation District

UMATILLA COUNTY
an Oregon political subdivision

By: _____
Name: _____
Its: _____
Date: _____

By: _____
Name: George L. Murdock
Its: Chair, Board of Commissioners
Date: December 29, 2021

Approved as to form by legal counsel:

WESTLAND IRRIGATION DISTRICT

By: _____
David Filippi
Stoel Rives LLP

UMATILLA COUNTY

By: _____
Douglas Olsen
Umatilla County Counsel

EXHIBIT A

AGREEMENT TO LEASE DELIVERY CAPACITY

THIS AGREEMENT TO LEASE DELIVERY CAPACITY (“Agreement”) is entered into by and between Umatilla County, a political subdivision of the State of Oregon (“County”), and Westland Irrigation District, an Oregon irrigation district organized and operated under ORS Chapter 545 (“Westland”), (collectively referred to as the “Parties”), on the date both Parties have signed this Agreement below (“Effective Date”).

This Agreement is entered into by and between the Parties pursuant to the exercise of the Option Agreement dated _____, 2021, by and between the Parties. The meaning of terms defined in the Option Agreement shall have the same meaning when those terms are used in this Agreement.

NOW THEREFORE, consistent with the consideration exchanged in the Option Agreement, and in exchange for the consideration described in this Agreement, the Parties agree to execute this Agreement as follows:

- 1. County Assignment of Interest in Interruptible Intake Capacity.** County assigns to Westland its right of first refusal granted by Grimmway Farms to the County for the use of Grimmway’s 15 cfs of interruptible intake capacity.

- 2. County Held Assets/Agreements for the Benefit of Westland.** County commits to hold the following assets in perpetuity for the benefit of Westland, so long as County remains a Party to this Agreement, Westland remains in existence and in good standing as a legal entity, and this Agreement remains in effect:
 - 2.1** Pipeline Easement Agreement, recorded as Instrument #2020-7010075 in the Office of Umatilla County Records;
 - 2.2** Agreement to Purchase Delivery Capacity, recorded as document #053120021 in the Office of Umatilla County Records; and
 - 2.3** 60-foot Utility Easement across the Umatilla Chemical Depot, recorded as document # _____ in the Office of Umatilla County Records.

County further commits to obtaining and holding any other easements necessary for the conveyance of water from the Columbia pumping station to the Project Point of Take-Off.

- 3. Project Point of Take-Off.** Westland shall select the location of the Project Point of Take-Off, and County shall help to facilitate the selected location. In the event there is a gap between the termination of the Project Mainline and the Project Point of Take-Off, Westland agrees to negotiate with the County to grant to or secure from the County an easement, or secure an easement from a third party, as necessary for the connection between the Project Mainline and the Project Irrigation Component.

4. Payment for Use of Project Mainline. Following the payment to exercise the Option Agreement dated _____, 2021, Westland agrees to pay County an annual use payment with the amount to be negotiated in good faith by Westland and County, whereby this annual use payment shall reflect a fair and reasonable cost to County for Westland’s use of the Project Mainline, over and above the Operations, Maintenance, and Mitigation water payments described in Section 10 below. The Parties recognize that the County will include a return on investment (yet to be determined), as well as establish a maintenance reserve (yet to be determined) within the annual payment which will be in addition to operations, maintenance and any mitigation costs.

5. Project Development Engineering and Consulting Fees. The Parties agree to the following responsibilities for payment of engineering and consulting fees necessary to secure a grant and/or loan finance package for the Project:

5.1 County Responsibilities. County shall pay all preliminary design engineering and consulting fees necessary to meet grant and loan application requirements for Phase 1, Phase 2 and Phase 3 of the Project, with the Project Phases described in Recital I of Option Agreement dated _____, 2021.

5.2 Westland Responsibilities. Westland shall pay all preliminary design engineering, consulting, and construction costs necessary to meet grant and/or loan requirements for the Project Irrigation Component. Westland shall also be responsible for any and all costs associated with securing irrigation water use authorizations and/or contracts for the period from March 1 through October 31.

6. Financing Responsibilities.

6.1 County will be responsible for financing, and guaranteeing all debt for financing, of construction engineering, construction management, and construction for Phase 1, Phase 2 and Phase 3.

6.2 Westland will be responsible for financing, and guaranteeing all debt for financing, of construction engineering, construction management, and construction of the Project Irrigation Component.

6.3 In the event that there is a gap between the termination of the Project Mainline and the Project Point of Take-Off, then County and Westland will each be responsible for one-half of the financing, and one-half of guaranteeing all debt for financing of construction engineering, construction management, and construction of the pipeline to covert the gap.

7. Reservations and Use.

7.1 Westland reserves and may use 35 cfs of the 45 cfs of capacity in the Project Mainline from March 1 through October 31 of each year (“Irrigation Season Capacity”) for delivery of irrigation water to its patrons and contractees, and including the delivery of water for Westland recharge projects to enhance or support irrigation water supplies. County maintains the first right of use of any water supply capacity in Phase 1 and Phase

2 from March 1 through October 31 of each year should Westland not require or otherwise be utilizing any or all of Project Mainline capacity (“Interruptible Capacity”).

7.2 In the event the County does not use all of the remaining 10 cfs of uninterruptible capacity in Phase 1 and Phase 2 from March 1 through October 31 in a particular year for M&I purposes, Westland may use all or a portion (as available) of this 10 cfs.

7.3 In the event Westland does not use all of its capacity in the Project Mainline during the Irrigation Season Capacity, County may use all or a portion (as available) of the unused capacity.

7.4 County reserves all the capacity in Phase 1 and Phase 2 from November 1 through February 28/29 of each year (“Winter Capacity”).

7.5 County grants Westland a right of first refusal to obtain the first 10 cfs of the County’s recharge water supply that would be available from the County’s recharge water supply. This right of first refusal shall terminate three years from the date of this Lease Agreement should Westland not exercise the right of first refusal within that time period.

7.6 This Lease Agreement, including Westland’s reservation and use of the Project Mainline described herein, shall continue annually for 99 years beyond the Effective Date.

8. Water Rights, Water Use Authorizations, and Contracts.

8.1 Westland shall be responsible for securing water rights, water use authorizations, and/or contracts for any Irrigation Season water use each year.

8.2 County shall be responsible for securing and maintaining compliance with all water rights, water use authorizations, and/or contracts necessary for recharge testing, recharge operations, or direct supply operations from October 1 through April 14, as well as any use of water by County of the Interruptible Capacity during the Irrigation Season.

8.3 County shall be responsible for securing and maintaining compliance with all municipal and/or industrial water rights used for Phase 1, Phase 2 and Phase 3.

9. Operations and Maintenance. County agrees to operate and maintain the Project Mainline and Project Recharge Component. Westland agrees to operate and maintain the Project Irrigation Component.

10. Operations, Maintenance and Mitigation Water Payments. Totalizing flow meters shall be installed at the Project Point of Take-Off and each Party shall be responsible for Operations, Maintenance, and Mitigation (“OM&M”) payments as follows:

10.1 Westland and County OM&M Responsibilities. Westland and County shall be responsible for OM&M payments based on each Party’s proportionate use of the Project Mainline.

10.2 Additional Mitigation Cost Responsibilities (April 15 through September 30). Unless agreed upon in writing by both Parties, Westland and County agree that this period requires mitigation. Prior to commencing irrigation or recharge use during this period, the Parties will be responsible for mitigation costs for their own uses.

11. Power Costs. A power meter shall be installed at the pump station works of the Project Mainline, and Westland and County shall be responsible for power costs based on each Party's proportionate use of the Project Mainline. Power cost shall be divided proportionately each month and each Party's power cost shall be based upon the percentage of water each Party diverts.

12. Successor and Assigns. This Agreement will be binding on and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and permitted assigns. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned or sub-contracted by any Party without the prior written consent of the other Party.

13. Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or will be construed to confer on any person, other than the Parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

14. Notices. All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, mailed by certified mail, or delivered by an overnight delivery service with confirmation to the other Party at the following addresses or at such other addresses as a Party may designate by like notice to the other Party:

To Umatilla County:
Chair
Umatilla County Board of Commissioners
216 SE 4th Street
Pendleton, OR 97801

To Westland Irrigation District:
Chair
Westland Irrigation District
P.O. Box 944
Hermiston, OR 97838

Any notice or other communication will be deemed to be given (i) on the date of personal delivery; (ii) at the expiration of the 7th day after the date of deposit in the United States mail; or (iii) on the date of confirmed delivery by overnight delivery service.

15. Modifications. This Agreement may be amended only by an instrument in writing executed by all the Parties.

16. Captions. The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."

17. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement. Email transmission of any signed original document, and retransmission of any signed email transmission, will be the same as delivery of an original. At the request of any Party, the Parties will confirm email transmitted signatures by signing an original document. Each Party agrees (i) to execute and deliver such other documents; and (ii) to do and perform such other acts and things, as the other Party may reasonably request, to carry out the intent and accomplish the purposes of this Agreement.

18. Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the Party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

19. Time of the Essence. Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.

20. Cost of Preparation. Each Party to this Agreement will bear the Party's own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.

21. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

22. Attorney Fees. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the Party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

23. Remedies. The Parties agree that the remedy at law for any breach or threatened breach by a Party may, by its nature, be inadequate, and that the other Party will be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

24. Dispute Resolution. Any claim or dispute between the Parties arising out of or relating to this Agreement shall be decided by arbitration in accordance with the Expedited Arbitration Rules of the American Arbitration Association currently in effect. After a dispute arises, either Party may file a notice of the demand for arbitration in writing with the other Party and with the American Arbitration Association. The award rendered by the arbitrator shall be final, and judgment may be entered in accordance with applicable law in any court having jurisdiction. There shall be no right to trial de novo or appeal. Unless otherwise agreed by the Parties, any

arbitration hearing shall be held in Portland, Oregon. This Section shall be specifically enforceable under applicable law in any court having jurisdiction.

25. Severability. If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.

26. Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the Parties with respect to such subject matter.

27. Authority. The undersigned individuals represent and warrant that they are vested with the necessary authority to sign this Agreement on behalf of the entity they represent.

The undersigned entered into this Agreement as of the Effective Date.

WESTLAND IRRIGATION DISTRICT
an Oregon Irrigation District

UMATILLA COUNTY
an Oregon political subdivision

By: _____
Name: _____
Its: _____
Date: _____

By: _____
Name: _____
Its: _____
Date: _____

Approved as to form by legal counsel:

WESTLAND IRRIGATION DISTRICT

UMATILLA COUNTY

By: _____

By: _____

Umatilla County Counsel

ASSIGNMENT

THIS ASSIGNMENT (“assignment”) is entered into by and between Umatilla County, a political subdivision of the State of Oregon (“County”), and Westland Irrigation District, an Oregon irrigation district organized and operated under ORS Chapter 545 (“Westland”), (collectively referred to as the “Parties”), on the date both Parties have signed below (“Effective Date”).

RECITALS

A. County has acquired 30 cubic feet per second (“cfs”) of uninterruptible pumping capacity and 15 cfs of additional, interruptible pumping capacity at a Columbia River pump station located at:

Township	Range	Meridian	Section	¼ ¼	Lot	Location
5N	27E	Willamette	13	NW SW	4	POD located 2400 feet North and 330 feet East from the SW Corner, Section 13

B. County has an interest in constructing a ≥ 42 -inch mainline, and Columbia River pumping station capable of delivering a minimum of 45 cfs (the “Project Mainline”) to an area of the Umatilla Chemical Depot in the vicinity of the Westland Road/Interstate 82 interchange (“Project Point of Take-Off”).

C. County also has an interest in constructing an aquifer recharge basin in the area of the Umatilla Chemical Depot in the vicinity of Westland Road/Interstate 82 to conduct aquifer recharge testing and long-term operations in the Ordinance Alluvial Aquifer (“Project Recharge Component”). The County anticipates two phases of the Project Recharge Component. First, during “Project Recharge Component Testing,” the County will test recharge and will not be actively marketing stored water, resulting from recharge, to customers. And then second, during “Project Recharge Component Operations,” the County will have transitioned from recharge testing and will be actively marketing and selling stored water, resulting from recharge, to customers.

D. Westland has interest in securing 20 cfs of uninterruptible capacity plus 15 cfs of interruptible capacity from the Project Mainline, during the irrigation season (March 1 through October 31, 245 days). Prior to finalizing any financing package for the Project, Westland understands that it will need an agreement with one or more third parties to determine the amount and timing of available water that constitutes the 15 cfs of interruptible capacity from the Project Mainline. In addition, Westland has an interest in securing an additional 10 cfs of the uninterruptible capacity from the County during those irrigation seasons in which the County is not using that capacity for municipal and industrial (“M&I”) purposes.

E. Westland has interest in constructing and operating a +/- 42 inch water supply distribution system, beginning at the termination point of the Project Mainline (again, “Project Point of Take-Off”) and running along the Westland A-Line canal for delivery to Westland patrons (“Project Irrigation Component”).

F. Consistent with the above, Westland would like to deliver Columbia River water to its patrons, and to facilitate this, Westland in separate agreements is working to obtain an option to utilize certain interests in the Port of Umatilla's Columbia River mitigation water, as well as other mitigation water necessary to facilitate the diversion and use of the 20 cfs of uninterruptible capacity plus 15 cfs of interruptible capacity from the Project Mainline described above, as well as mitigation that would be necessary to facilitate the diversion and use of the 10 cfs of uninterruptible capacity from the County during those irrigation seasons in which the County is not using that capacity for M&I purposes.

G. Westland would like an option to lease from County, and County is willing to grant an option to lease to Westland, the 20 cfs of uninterruptible capacity, plus 15 cfs of interruptible capacity, plus the additional 10 cfs of uninterruptible capacity during those irrigation seasons in which the County is not using that capacity for M&I purposes, from the Columbia River pump station, as described in the Recitals above.

H. In August 2020, Westland paid the County \$45,000 as a good faith payment to reserve capacity in the Project Mainline from March 1 through October 31 of each year for delivery of irrigation water to its patrons and contractees, and including the delivery of water for Westland recharge projects to enhance or support irrigation water supplies. At the time of the payment, Westland and the County anticipated that the reservation of capacity was 30 cfs of uninterruptible capacity, plus 15 cfs of interruptible capacity.

I. The project has several components or phases that have been identified. Phase 1 includes the Columbia River pump station and construction of the pipeline to the edge of the depot; Phase 2 is the construction of the pipeline from the edge of the depot to the recharge site and other sites on the depot; Phase 3 is construction of a testing basin on the depot and a Umatilla River recharge line from Westland pond site to County test basin on the depot. The phases may overlap and may be completed in different order.

J. The purpose of this document is to assign to County the canal crossing.

NOW, THEREFORE, in consideration of the representations, covenants, and promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Crossing

Westland assigns and conveys to the County the use of its U.S. Bureau of Reclamation-approved Crossing Agreement to cross the West Extension Irrigation District mainline canal. Westland will inform the Bureau that the district is deferring full crossing authority to Umatilla County.

2. General Provisions

A. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this assignment or the breach thereof, the Parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution after good faith efforts to resolve the issue, then, upon 30 days written notice by either Party to the other, all disputes, claims, questions, or differences shall be finally settled by binding arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

B. No Third-Party Beneficiaries. Westland and County are the only parties to this document and are the only parties entitled to enforce its terms. Nothing in this document gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.

C. No Agency or Partnership. Neither Westland nor County, nor the officers, employees, or agents of Westland or County, are, or shall be deemed to be, agents, partners, or joint venturers of or with the other. Both Westland and County are separately and exclusively responsible for acts, errors, and omissions of its own officers, employees, and agents except to the extent expressly provided otherwise in this assignment.

D. Rule of Construction. Westland and County hereby affirm that the terms of this assignment were negotiated between the Parties and their respective legal counsel and shall not be construed against either Westland or County as a drafter of this document.

E. Governing Law. The laws of Oregon shall govern this Option Agreement. Any disputes shall be resolved through the provisions of Section 3.A of this Option Agreement.

F. Counterparts. This assignment may be executed in separate counterparts, which together will constitute an agreement between the Parties.

G. Assignment. This assignment may not be further assigned, whether in whole or in part, without the consent of the other Party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the undersigned have caused this assignment to be executed as of the ____ day of _____, 2021.

WESTLAND IRRIGATION DISTRICT
an Oregon Irrigation District

UMATILLA COUNTY
an Oregon political subdivision

By: _____
Name: _____
Its: _____
Date: _____

By: _____
Name: _____
Its: _____
Date: _____

Approved as to form by legal counsel:

WESTLAND IRRIGATION DISTRICT

UMATILLA COUNTY

By: _____
David Filippi
Stoel Rives LLP

By: _____
Douglas Olsen
Umatilla County Counsel

AGREEMENT
Umatilla River Recharge Component

THIS AGREEMENT (“Agreement”) is entered into by and between Umatilla County, a political subdivision of the State of Oregon (“County”), and Westland Irrigation District, an Oregon irrigation district organized and operated under ORS Chapter 545 (“Westland”), (collectively referred to as the “Parties”), on the date both Parties have signed Agreement below (“Effective Date”).

RECITALS

A. County has acquired 30 cubic feet per second (“cfs”) of uninterruptible pumping capacity and 15 cfs of additional, interruptible pumping capacity at a Columbia River pump station located at:

Township	Range	Meridian	Section	¼ ¼	Lot	Location
5N	27E	Willamette	13	NW SW	4	POD located 2400 feet North and 330 feet East from the SW Corner, Section 13

B. County has an interest in constructing a ≥42-inch mainline, and Columbia River pumping station capable of delivering a minimum of 45 cfs (the “Project Mainline”) to an area of the Umatilla Chemical Depot in the vicinity of the Westland Road/Interstate 82 interchange (“Project Point of Take-Off”).

C. County also has an interest in constructing an aquifer recharge basin in the area of the Umatilla Chemical Depot in the vicinity of Westland Road/Interstate 82 to conduct aquifer recharge testing and long-term operations in the Ordinance Alluvial Aquifer (“Project Recharge Component”). The County anticipates two phases of the Project Recharge Component. First, during “Project Recharge Component Testing,” the County will test recharge and will not be actively marketing stored water, resulting from recharge, to customers. And then second, during “Project Recharge Component Operations,” the County will have transitioned from recharge testing and will be actively marketing and selling some stored water, resulting from recharge, to customers.

D. Westland has interest in securing 20 cfs of uninterruptible capacity plus 15 cfs of interruptible capacity from the Project Mainline, during the irrigation season (March 1 through October 31, 245 days). Prior to finalizing any financing package for the Project, Westland understands that it will need an agreement with one or more third parties to determine the amount and timing of available water that constitutes the 15 cfs of interruptible capacity from the Project Mainline. In addition, Westland has an interest in securing an additional 10 cfs of the uninterruptible capacity from the County during those irrigation seasons in which the County is not using that capacity for municipal and industrial (“M&I”) purposes.

E. Westland has interest in constructing and operating a +/- 42 inch water supply distribution system, beginning at the termination point of the Project Mainline (again, “Project

Point of Take-Off”) and running along the Westland A-Line canal for delivery to Westland patrons (“Project Irrigation Component”).

F. Consistent with the above, Westland would like to deliver Columbia River water to its patrons, and to facilitate this, Westland in separate agreements is working to obtain an option to utilize certain interests in the Port of Umatilla’s Columbia River mitigation water, as well as other mitigation water necessary to facilitate the diversion and use of the 20 cfs of uninterruptible capacity plus 15 cfs of interruptible capacity from the Project Mainline described above, as well as mitigation that would be necessary to facilitate the diversion and use of the 10 cfs of uninterruptible capacity from the County during those irrigation seasons in which the County is not using that capacity for M&I purposes.

G. Westland would like an option to lease from County, and County is willing to grant an option to lease to Westland, the 20 cfs of uninterruptible capacity, plus 15 cfs of interruptible capacity, plus the additional 10 cfs of uninterruptible capacity during those irrigation seasons in which the County is not using that capacity for M&I purposes, from the Columbia River pump station, as described in the Recitals above.

H. In August 2020, Westland paid the County \$45,000 as a good faith payment to reserve capacity in the Project Mainline from March 1 through October 31 of each year for delivery of irrigation water to its patrons and contractees, and including the delivery of water for Westland recharge projects to enhance or support irrigation water supplies. At the time of the payment, Westland and the County anticipated that the reservation of capacity was 30 cfs of uninterruptible capacity, plus 15 cfs of interruptible capacity.

I. The project has several components or phases that have been identified. Phase 1 includes the Columbia River pump station and construction of the pipeline to the edge of the depot; Phase 2 is the construction of the pipeline from the edge of the depot to the recharge site and other sites on the depot; Phase 3 is construction of a testing basin on the depot and a Umatilla River recharge line from Westland pond site to County test basin on the depot. The phases may overlap and may be completed in different order.

J. Westland and the County have jointly identified an interim recharge step between Phase 2 and Phase 3 that has been identified as the “Umatilla River Recharge Component.”

K. The Umatilla River Recharge Component includes a pipeline extending from the Westland gravel pit to the County recharge basin on the depot to enable Westland to deliver Umatilla River water to the County recharge basin for both recharge testing and, possibly, long-term recharge supply.

L. The purpose of this agreement relates to the Umatilla River Recharge Component and Westland’s use of the County recharge basin on the depot.

NOW, THEREFORE, in consideration of the representations, covenants, and promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Umatilla River Recharge

- A. The Parties agree that Westland, at its sole option, will construct, at Westland's expense, a pipeline from the Westland gravel pit pond to the County depot test basin for the purpose of using the pond and Umatilla River water to recharge the Ordinance Alluvial Aquifer at the County depot test basin location.
 - A.1 Westland shall own any and all recharge permits for Umatilla River water recharge testing on the depot.
 - A.2 Westland shall be responsible for all operations costs to convey Umatilla River water from the Westland gravel pit to the County depot test basin location.
 - A.3 All Umatilla River water placed in storage shall be owned by Westland.
 - A.3.1 County and Westland will work to ensure that any request for secondary use licenses involving Umatilla River water stored in the Ordinance Alluvial Aquifer through use of the County depot test basin requires Westland authorization under separate agreement.
- B. County will be responsible for construction of the County depot test basin and will be responsible for any recharge testing and operations involving Columbia River water.
 - B.1 County shall own any and all recharge permits for Columbia River water recharge testing and operations on the depot.
 - B.2 County shall be responsible for all operations costs to convey Columbia River water to the County depot test basin.
 - B.3 All Columbia River water placed in storage shall be owned by County.
 - B.3.1 County and Westland will work to ensure that any request for secondary use licenses involving Columbia River water stored in the Ordinance Alluvial Aquifer through use of the County depot test basin requires County authorization under separate agreement.
- C. Westland's maximum annual recharge volume in the County depot test basin will be 5,000 acre-feet.
- D. Westland and County will both install meters at their outfalls to the recharge basin. Annual depot test basin maintenance costs will be assessed based upon the percentage of use of the basin documented by the meter readings at each outfall.

2. General Provisions

A. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution after good faith efforts to resolve the issue, then, upon 30 days written notice by either Party to the other, all disputes, claims, questions, or differences shall be finally settled by binding arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

B. Severability. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

C. Force Majeure. No Party will be considered in default in the performance of its obligations under this Agreement to the extent that the performance of such obligation is prevented or delayed by any cause, existing or in the future, which is beyond the reasonable control of the affected Party, including, but not limited to Acts of God, earthquake, casualty, drought, labor disputes, civil commotion, war and the like. Obligations related to the payment of monies shall not be eliminated or delayed based on this Force Majeure provision, but shall continue unabated.

D. No Third-Party Beneficiaries. Westland and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.

E. No Agency or Partnership. Neither Westland nor County, nor the officers, employees, or agents of Westland or County, are, or shall be deemed to be, agents, partners, or joint venturers of or with the other. Both Westland and County are separately and exclusively responsible for acts, errors, and omissions of its own officers, employees, and agents except to the extent expressly provided otherwise in this Agreement.

F. Survival of Covenants. Any provision of this Agreement, which by its terms has or may have application after the expiration or earlier termination of this Agreement, including all covenants, warranties, and agreements, will be deemed to the extent of such application to survive the expiration or termination of this Agreement.

G. Rule of Construction. Westland and County hereby affirm that the terms of this Agreement were negotiated between the Parties and their respective legal counsel and shall not be construed against either Westland or County as a drafter of this Agreement.

H. Governing Law. The laws of Oregon shall govern this Agreement. Any disputes shall be resolved through the provisions of Section 2.A of this Agreement.

I. Counterparts. This Agreement may be executed in separate counterparts, which together will constitute an agreement between the Parties.

J. Notice. Notice shall be made by a written letter delivered by a Party to this Agreement to the other Party by both electronic mail and first class US mail to the appropriate individual listed below. Notice shall be deemed effective as of the date of the electronic mail so long as receipt is confirmed by the receiving Party with a reply electronic mail, or in any event, two days following mailing by first class US mail. The designated contact person for each Party is as follows:

District:
Curtis Engbretson
Westland Irrigation District
PO Box 944
Hermiston, Oregon 97838

County:
Chair, Board of Commissioners
Umatilla County
216 SE 4th Street
Pendleton, Oregon 97801

Email: curtis@westlandirrigation.com
Phone: (541) 667-2030

Email: doug.olsen@umatillacounty.net
Phone: (541) 276-7111

Either Party may change its respective contact person or address listed above by written Notice to the other Party.

K. Assignment. This Agreement may not be assigned.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the ____ day of _____, 2021.

WESTLAND IRRIGATION DISTRICT
an Oregon Irrigation District

UMATILLA COUNTY
an Oregon political subdivision

By: _____
Name: _____
Its: _____
Date: _____

By: _____
Name: _____
Its: _____
Date: _____

Approved as to form by legal counsel:

WESTLAND IRRIGATION DISTRICT

UMATILLA COUNTY

By: _____
David Filippi
Stoel Rives LLP

By: _____
Douglas Olsen
Umatilla County Counsel