

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES
AND THE CITY OF OREGON CITY**

THIS AGREEMENT (this “Agreement”) is entered into and between Water Environment Services (“WES”), an intergovernmental entity formed pursuant to ORS Chapter 190, and the City of Oregon City (“City”), a political subdivision of the State of Oregon, collectively referred to as the “Parties” and each a “Party.”

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

In 1984, the Tri-City Service District (“TCSD”) constructed a portion of the collection system within the City, located near Dunes Drive and McLaughlin Boulevard, adjacent to Clackamette Park. The construction connected the City’s existing collection system to WES’ new interceptor sewer, constructed as part of the same project, and allowed for the decommissioning of the Oregon City Sewer Treatment Plant. The City manages and maintains the overall collection system within its boundaries; however, there was no clear transfer of ownership over this portion of the collection system to the City. In January 2021, it was discovered that WES and the City have been completing regular inspection and maintenance on this portion of the collection system concurrently. It is believed that these independent activities have been occurring since 1984.

On July 1, 2017, TCSD transferred all of its right, title and interest in all tangible and intangible assets over to WES, as a part of its formation as an intergovernmental entity under Oregon Revised Statutes Chapter 190. WES desires to transfer to the City, and the City agrees to accept, ownership and responsibility for the collection system assets described in this Agreement.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Effective Date.** This Agreement shall take effect when executed by both Parties (the “Effective Date”).
2. **Property.** WES hereby transfers to City all of WES’s right, title, and interest in and to the items of property (the “Property”) listed below:

Two sanitary sewer manholes and two sanitary sewer pipelines further described in Exhibit A and depicted in Exhibit B, both attached hereto and incorporated by reference.

3. **Consideration.** The consideration for the transfer of the Property is other such good and valuable consideration, receipt of which is hereby acknowledged by WES.
4. **Transfer of Ownership.** City will take ownership of the Property on the Effective Date.
5. **Representations and Warranties.**

- A. *City Representations and Warranties*: City represents and warrants to WES that City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms.
- B. *WES Representations and Warranties*: WES represents and warrants to City that WES has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of WES enforceable in accordance with its terms.
- C. Except as otherwise expressly stated above, WES makes no warranties or representations with respect to the Property. City accepts the Property AS IS, WHERE IS, in its present condition, including all defects and with all faults, and there are no warranties of merchantability or of fitness for a particular purpose with respect to the Property.
- D. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. **Termination.** Reserved.

7. **Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, WES agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the WES or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the WES has a right to control, occurring prior to the Effective Date of this Agreement.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the WES, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control, occurring after the Effective Date of this Agreement.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication

or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information by giving prior written notice thereof to the other Party at its then current notice address.

A. Nathan Seaver or their designee will act as liaison for the WES.

Contact Information:

150 Beavercreek Rd Suite 430
Oregon City, OR 9704
nseaver@clackamas.us
Office: 503-742-4573
Mobile: 503-679-5709

Josh Wheeler or their designee will act as liaison for the City.

Contact Information:

625 Center St. Oregon City, OR 97045
jwheeler@orcite.org
Office: 503-657-0891
Mobile: 971-322-9745

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon, and the ordinances of Clackamas County and WES without giving effect to the conflict of law provisions thereof. Any claim between WES and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the WES of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not

preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

D. **Access to Records.** Reserved.

E. **Work Product.** Reserved.

F. **Hazard Communication.** Reserved.

G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

K. **Independent Contractor.** Reserved.

L. **No Third-Party Beneficiary.** City and WES are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

M. **Assignment.** City may assign or transfer this Agreement, in whole or in part, or any right or obligation hereunder, at any time and shall provide written notice of such assignment to WES within thirty (30) days of such assignment or transfer.

- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** City agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Reserved.
- T. **Confidentiality.** Reserved.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Water Environment Services

City of Oregon City

Chair

Authorized Signatory

Date

Date

Exhibit A

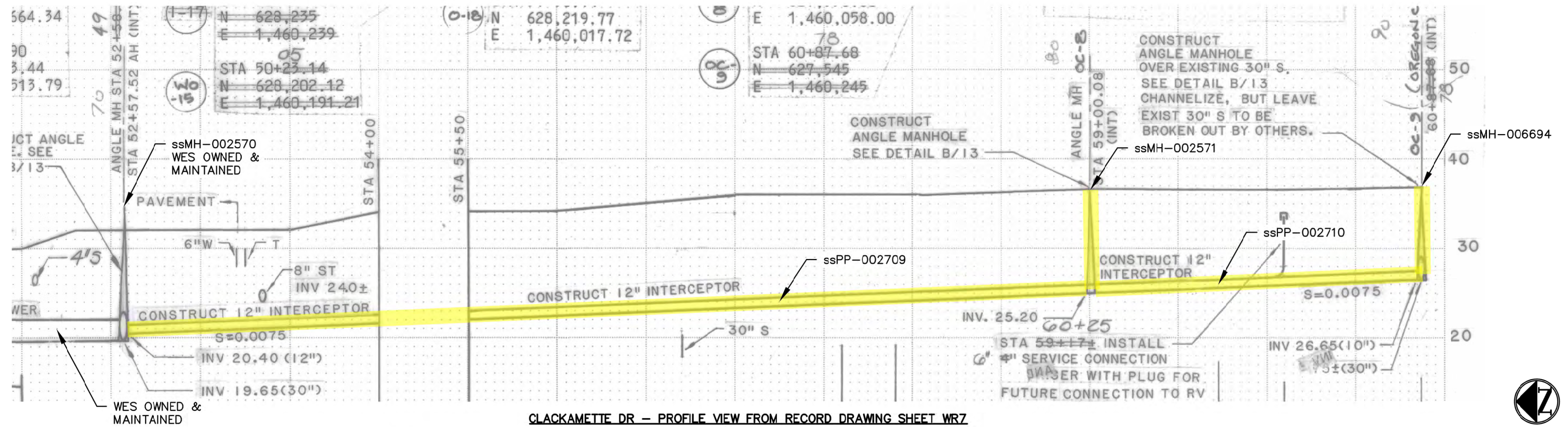
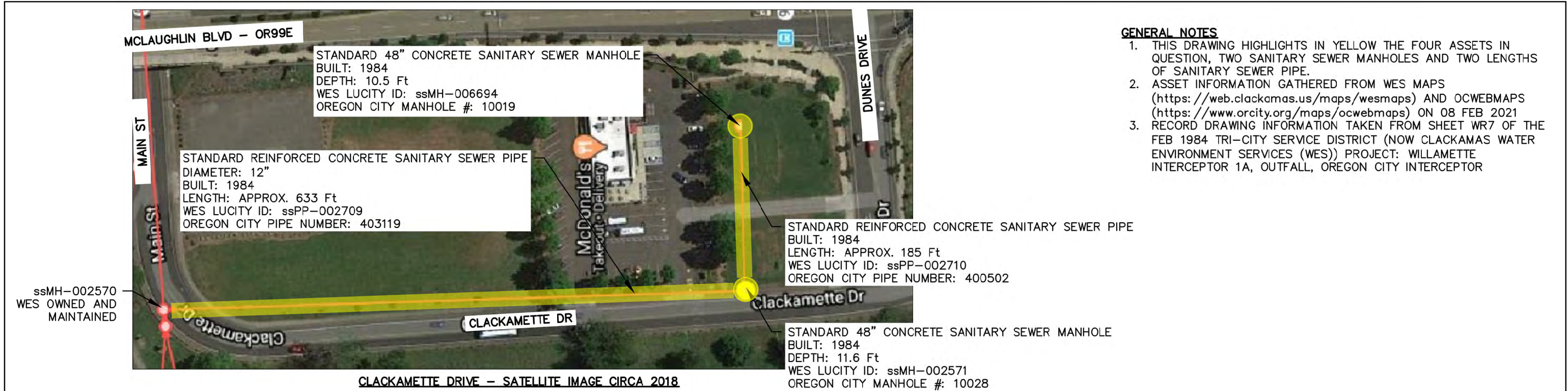
The four structures are located in Oregon City, Oregon. They are generally located between McLoughlin Boulevard and Clackamette Park, in the area north of Dunes Drive. The four structures are connected to each other in series with the system connected to Oregon City's sanitary sewer infrastructure on the south end and Water Environment Services' sanitary sewer infrastructure on the north end.

- **Manhole SSMH-006694**: The most upstream structure is ssMH-006694, situated in the northeast quadrant of a grassy area located at the northwest corner of McLoughlin Boulevard and Dunes Drive. Manhole SSMH-006694 is a 48" diameter concrete manhole, is approximately 10.5 feet deep, has one inlet pipe from the south, a 30-inch pipe owned by the Oregon City, and one outlet pipe to the west, ssPP-002710.
- **Pipe ssPP-002710**: A reinforced concrete pipe that extends approximately 185 feet west from ssMH-006694 and terminates manhole ssMH-002571.
- **Manhole ssMH-002571**: Situated in the northwest quadrant of the grassy area located at the northwest corner of McLoughlin Boulevard and Dunes Drive, near the sidewalk that parallels the east side of Clackamette Drive. Manhole ssMH-002571 is a 48" diameter concrete manhole, is approximately 11.6 feet deep, has one inlet pipe from the east, ssPP-002710, and one outlet pipe to the north, ssPP-002709.
- **Pipe ssPP-002709**: A 12-inch reinforced concrete pipe that extends approximately 633 feet north, paralleling Clackamette Drive, and terminates at manhole ssMH-002570. Manhole ssMH-002570 is part of the Willamette Interceptor, is owned and maintained by WES and will continue to be operated by WES indefinitely.

Exhibit B

ASSET MAPS

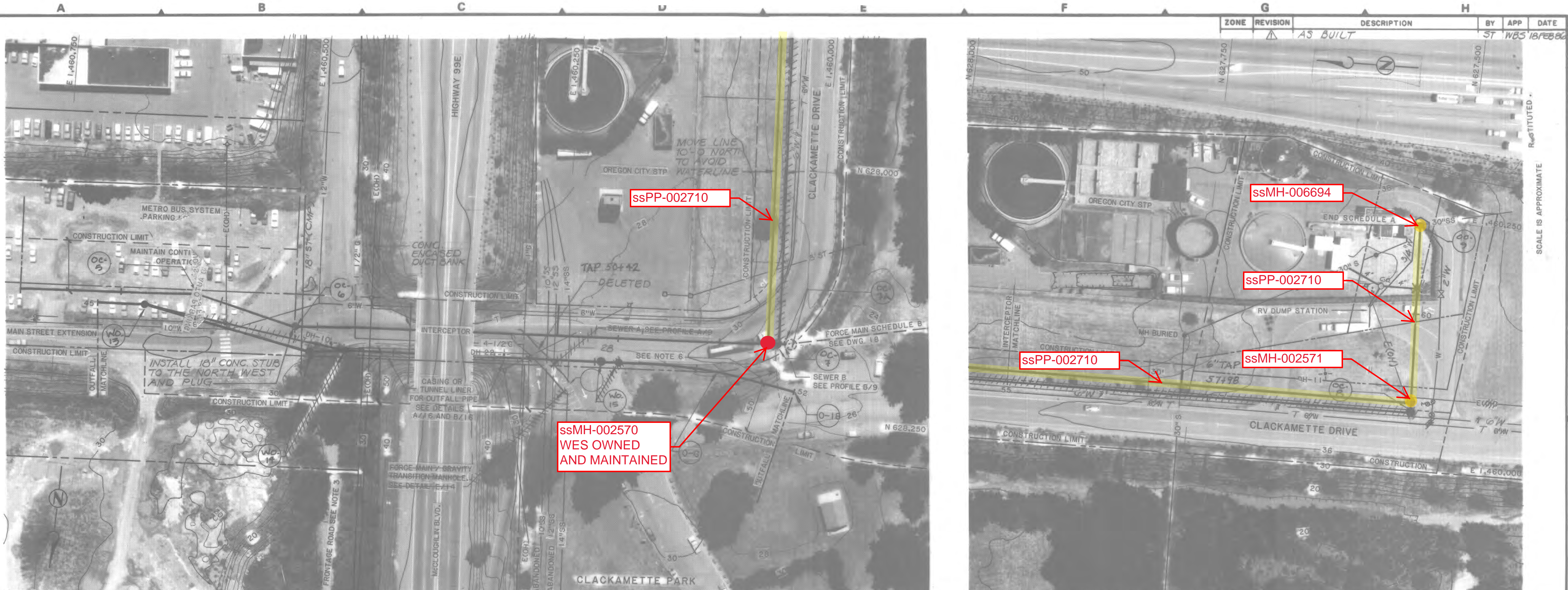
Exhibit B



| <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>BY</th> <th>REVISIONS</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> | NO. | DATE | BY | REVISIONS | | | | | | | | | | | | | DESIGNED BY: NRS DRAWN BY: NRS CHECKED BY: SCALE: N.T.S. DATE: FEBRUARY 2021 PROJECT NO: | <p>WATER ENVIRONMENT SERVICES <small>Water Quality Protection • Surface Water Management Wastewater Collection and Treatment</small></p> | DRAWING NO. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|------|----|-----------|--|--|--|--|--|--|--|--|--|--|--|--|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
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| WES OWNED & MAINTAINED | SHEET NO. 1 of 1 | | | | | | | | | | | | | | | | | | |

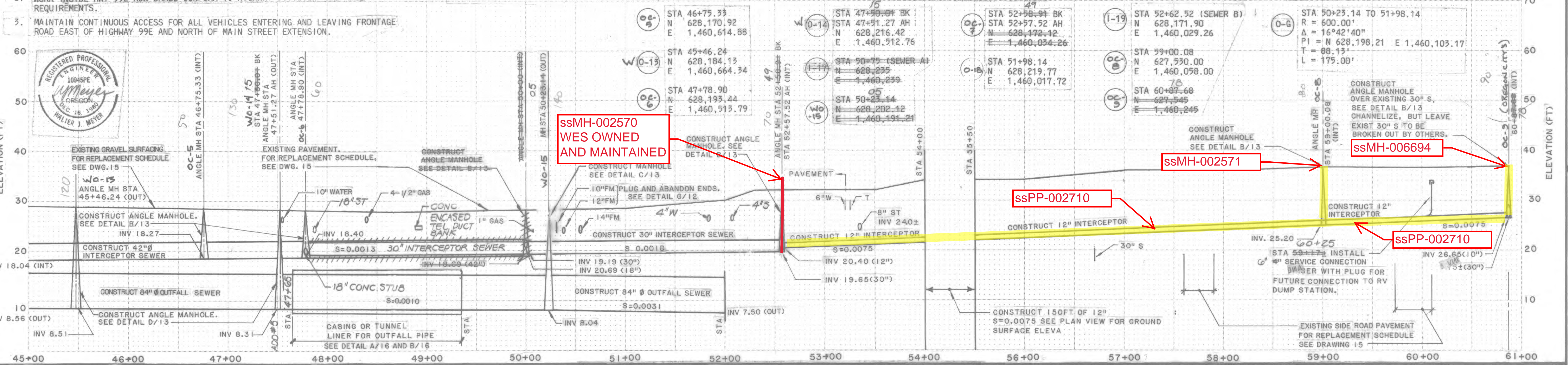
Exhibit B

WES RECORD DRAWING WR7



| ZONE | REVISION | DESCRIPTION | BY | APP | DATE |
|------|----------|-------------|----|-----|------|
| | AS BUILT | | | | |

- NOTES:
- USE PULLED JOINTS FOR CURVE 0-6.
 - OUTFALL PIPELINE TO BE TUNNELED UNDER HIGHWAY 99E AS SHOWN ON PLAN VIEW. WORK INSIDE HWY 99E ROW SHALL CONFORM TO HIGHWAY DIVISION PERMIT REQUIREMENTS.
 - MAINTAIN CONTINUOUS ACCESS FOR ALL VEHICLES ENTERING AND LEAVING FRONTAGE ROAD EAST OF HIGHWAY 99E AND NORTH OF MAIN STREET EXTENSION.
 - FENCES HAVE NOT BEEN HIGHLIGHTED WITH FENCE LINE SYMBOL. FIELD VERIFY FENCE LOCATIONS.
 - CONSTRUCT TEMPORARY ACCESS ROAD FOR CLACKAMETTE PARK WHEN PERMANENT ACCESS IS BLOCKED BY CONSTRUCTION. MAINTAIN ACCESS TO PARK AT ALL TIMES. RESTORE PERMANENT ACCESS BEFORE REMOVING TEMPORARY ACCESS.
 - ALL GROUND FEATURES AND UTILITIES ARE LOCATED ON THE DRAWING PROFILE USING THE INTERCEPTOR STATIONING. USE THE PLAN TO ESTABLISH THE LOCATIONS RELATIVE TO THE OUTFALL.



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|--------------------------------------------------------------------|---------------------|----------------------------------------------|---------------------|---------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-----------------------------|
| BROWN AND COLDWELL CONSULTING ENGINEERS EUGENE OREGON | DESIGNED <i>TRN</i> | SUBMITTED <i>WJ Meyer</i> DATE <i>2-7-84</i> | FILE <i>1622</i> | TRI-CITY SERVICE DISTRICT CLACKAMAS COUNTY, OREGON | WILLAMETTE INTERCEPTOR 1A OUTFALL OREGON CITY INTERCEPTOR | OREGON CITY INTERCEPTOR AND OUTFALL PLAN AND PROFILE STA 45+00 TO STA 60+87.68 (INT) STA 45+00 TO STA 52+00 (OUT) | THIS LINE IS 1 INCH WHEN DRAWING IS FULL SIZE. IF NOT 1 INCH, SCALE ACCORDINGLY. | DRAWING NUMBER 8 |
| | DRAWN <i>MDS</i> | APPROVED <i>WJM</i> DATE <i>2-2-84</i> | DATE <i>FEB '84</i> | | | | | SHEET 8 OF 21 |
| | CHECKED <i>WJM</i> | APPROVED _____ DATE _____ | | | | | | |

Exhibit B

OCWebMaps Screenshot

Transfer manhole from Water Environment Services to City of Oregon City

Transfer pipe from Water Environment Services to City of Oregon City

