A. RECITALS

1. Many of the tributaries of the Tualatin River lack sufficient flow during summer and early fall to provide good water quality and aquatic habitat.

2. District releases stored water to enhance water quality and aquatic habitat in the main stem of the Tualatin River. District does not have the infrastructure to deliver and release stored water to the Tualatin River’s tributaries.

3. TVID operates the Springhill Pumping Plant that pumps water from the upper Tualatin River to its patrons via a piped distribution system. This TVID infrastructure, along with private irrigation systems, could be used to deliver water to tributaries of the Tualatin River.

4. District desires to collaborate with TVID, and its patrons, to deliver water for flow restoration purposes to the Tualatin River’s tributaries (Program) and to evaluate other activities that may restore and enhance the aquatic resources of the Tualatin Basin watershed.

5. TVID can provide cost-effective and efficient services for this Program and other activities and is recognized as a reliable and trustworthy partner by its patrons.

6. The parties are authorized by ORS 190.010 to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform.

NOW, THEREFORE, the parties do mutually agree as follows:

B. DISTRICT OBLIGATIONS

District shall:

1. Identify, on an annual basis, TVID turn-out boxes, properties or general stream-reaches where the flow restoration activities shall be conducted. If a general stream-reach is selected by District, then District and TVID shall collaborate to determine which turn-out boxes will be targeted for use.
2. Estimate, on an annual basis, the expected amount of water to be delivered in stream from each turn-out box and provide this information to TVID.

3. Approve compensation amounts TVID negotiates with its patrons for their participation in the Program prior to starting flow restoration activities at any given site.

4. Release quantities of its stored water from Hagg Lake into tributaries of the Tualatin River, in amounts equal to the water planned for release from TVID’s irrigation system for flow restoration purposes, when the tributaries are regulated off natural flow by the Watermaster.

5. Notify TVID when releases are to be initiated.

6. Notify TVID when releases are to be discontinued.

7. Not be responsible for the storage, maintenance or repair of any TVID infrastructure.

8. Reimburse TVID for installing piping, metering, instrumentation and diffusers at selected turn-out boxes; for delivering water to these selected turn-out boxes; and for releasing water from these turn-out boxes into streams. District shall pay TVID as follows:
   a) Water delivery: $48.00 per acre-foot
   b) Labor Costs: Time and materials basis (rates not to exceed $49.00 per hour)

9. Reimburse TVID for water wheeling costs; time spent in planning, coordination and administration; time spent in selecting turn-out boxes; and time spent coordinating with and paying TVID patrons on behalf of District for the purpose of Program. District shall pay TVID at rates not to exceed $49.00 per hour.

10. Reimburse TVID for time spent evaluating other means of improving watershed health in the Tualatin basin including, but not limited to: expanding reuse opportunities, improving water-quality monitoring, and developing new water management strategies to address future water scarcity concerns.

11. District’s total payment to TVID under this Agreement, including expense reimbursement, shall not exceed $255,000.

C. TVID OBLIGATIONS

TVID shall:

1. Acquire all the necessary permissions and rights of entry from participating patrons and landowners for District and TVID to access locations as needed for monitoring water quality, water quantity and other environmental indicators at all flow restoration sites designated on Exhibit A attached hereto, during the course of a flow restoration season (generally from June 1 through November 1 of any calendar year). All existing sites are identified in Exhibit A to this Agreement. New sites may be added after TVID receives written confirmation from District.
2. Compensate TVID patrons, at amounts negotiated by TVID and approved by District, for participating in the Program.

3. Install piping systems, instrumentation and diffusers at selected turn-out boxes for each flow restoration season.

4. Deliver District’s water from Hagg Lake to selected TVID turn-out boxes identified by TVID and confirmed by District for flow restoration purposes.

5. When requested by District, provide a list of likely turn-out boxes and associated TVID patrons considered candidate locations for flow restoration on stream reaches where flow restoration is desired by District.

6. Release water from approved turn-out boxes according to the schedule provided by District.

7. Remove and secure or store piping, metering, instrumentation and diffusers from streams and turn-out boxes once flow restoration releases are discontinued.

8. Be solely responsible for the storage, maintenance and repair of any TVID infrastructure.

9. Track the expenses associated with implementing the Program at individual turn-out boxes including labor, materials, services and any payments for participation on a release point by release point basis. Present expense reports to District at the conclusion of each flow restoration season for each release point and for any programmatic administrative charges.

10. Support District and its contractors to evaluate other means of improving the ecological health of the Tualatin Basin watershed including studies related to expanding reuse opportunities, improving water-quality monitoring, and developing new water management strategies to address future water scarcity concerns.

D. GENERAL TERMS

1. Amendment of Agreement. TVID and District may amend this Agreement from time to time, by mutual written agreement.

2. Indemnification Clause. Subject to any provision of the Oregon Constitution and ORS 30.260-300 and within the limits set forth in ORS 30.270, each party hereby agrees to protect, defend, hold harmless, and indemnify the other, its officers, employees and agents of and from any claims, damages, compensation, suits, actions and expenses, including reasonable attorney's fees, occasioned in whole or in part by the negligent acts, errors or omissions of the indemnitor or its employees, while in any way engaged in the
performance of this Agreement. In addition, each party shall be solely responsible for any contract claims, delay damages, or similar items arising from or caused by the negligent or wrongful action or inaction of the party.

3. **Resolution of Disputes.** If any dispute arising out of this Agreement cannot be resolved by the project managers from each party, the TVID District Manager and District Deputy General Manager will attempt to resolve the issue. If the TVID District Manager and District Deputy General Manager are not able to resolve the dispute, the parties will submit the matter to mediation, each party paying its own costs and sharing equally in common costs. In the event the dispute is not resolved in mediation, the parties will submit the matter to arbitration. The decision of the arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as otherwise provided in Oregon law.

4. **Laws and Regulations.** TVID and District agree to abide by all applicable laws and regulations.

5. **Integration.** This document constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject. No course of dealing between the parties and no usage of trade shall be relevant to supplement any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement and no waiver by a party of any right under this Agreement shall prejudice the waiving party's exercise of the right in the future.

6. **Attorney Fees.** If any dispute arises concerning the interpretation or enforcement of this Agreement, the prevailing party in any such dispute shall be entitled to recover all of its attorney fees, paralegal fees, costs, disbursements and other expenses from the nonprevailing party, including without limitation those arising before and at any trial, arbitration, bankruptcy, or other proceeding and in any appeal.

7. **Term of Agreement.** This Agreement is effective from the date of execution by both parties and will end on December 31, 2018.

8. **Termination.** This Agreement may be terminated by mutual written agreement of both parties.

9. **Interpretation of Agreement.** This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.
10. **Severability/Survival.** If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.

11. **Approval Required.** This Agreement and all amendments shall become effective when approved by 1) District's General Manager or the General Manager's designee and, when required by applicable District rules, District's Board of Directors and 2) the TVID District Manager and when required by TVID's Board of Directors.

12. **Choice of Law/Venue.** This Agreement and all rights, obligations and disputes arising out of the Agreement shall be governed by Oregon law. All disputes and litigation arising out of this Agreement shall be decided by the state courts in Oregon. Venue for all disputes and litigation shall be in Washington City, Oregon.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first written above.

**CLEAN WATER SERVICES**

By: ____________________________
    General Manager or Designee

Date: ___________________________

**TUALATIN VALLEY IRRIGATION DISTRICT**

By: ____________________________
    Joe Rutledge, District Manager

Date: ___________________________

APPROVED AS TO FORM

______________________________
District Counsel
Exhibit A