



RESOLUTION 2008-044

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT TO THE CITY OF SHERWOOD AND CLEAN WATER SERVICES IGA FOR THE OPERATION OF SANITARY SEWER AND SURFACE WATER FACILITIES

WHEREAS, the City of Sherwood (City) and Clean Water Services (District) entered into an IGA on January 4, 2005 for the operation of sanitary sewer and surface water facilities, and

WHEREAS, Section 7 of the IGA allows the agreement to be amended upon approval of the governing bodies of both parties, and

WHEREAS, joint evaluation of the existing IGA by both the City and the District has determined that the IGA is now in need of amendment due to changing standards and permit requirements.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1: By approval of this Resolution, the City Manager is authorized to sign the Amendment, marked as Exhibit A between the City and District.

Section 2: This resolution is and shall be effective from and after its passage by the Council.

Duly passed by the City Council this 24th day of June 2008.



Keith S. Mays, Mayor

ATTEST:



Sylvia Murphy, City Recorder

AMENDMENT TO INTERGOVERNMENTAL
AGREEMENT BETWEEN CITY OF SHERWOOD AND
CLEAN WATER SERVICES

THIS AMENDMENT is made and entered into as of the _____ day of _____, 2008, between the **City of Sherwood**, a municipal corporation of the State of Oregon, hereinafter referred to as "City," and **Clean Water Services**, a municipal corporation and county service district, hereinafter referred to as the "District."

WHEREAS City and District entered into an Intergovernmental agreement (IGA) on January 4, 2005 for the operation of sanitary sewer and surface water facilities; and

WHEREAS Section 7 of that IGA allows the agreement to be amended upon approval of the governing bodies of both parties; and

WHEREAS that IGA is now in need of amendment.

NOW, THEREFORE, it is agreed that the IGA be amended as follows:

1. In the recitals, revise the second "Whereas" statement to read:

WHEREAS as a county service district organized under ORS 451, the District has the legal authority for the sanitary sewerage and storm water (surface water) management programs within its boundaries consistent with relevant laws, rules and agreements. The District performs watershed, sub-basin and facility planning, develops standards and work programs, is the permit holder, and operates and maintains wastewater treatment facilities, ~~surface water collection system and the public~~ sanitary sewer conveyance systems, and the public surface water collection systems within ~~unincorporated areas and within certain cities within~~ its boundaries. ~~The District also performs various ancillary functions throughout the basin and within various cities;~~ and

2. In Section 1, Definitions, add the following new definitions, number them alphabetically, and renumber the existing definitions:
 - A. Local Program – The elements of the work program that are available for the City to perform.
 - B. District Wide Program – The elements of the work program that are performed exclusively by the District in all areas within the District's boundary.
 - C. Roadside Facilities include all of the following stormwater facilities within road rights of way:

1. Roadside Ditches and Swales are man-made ditches on one or both sides of roadways, within the road right-of-way and generally intended for the collection and conveyance of storm and surface water runoff from the road.
 2. Driveway Culverts are short pipes passing under driveways connecting two sections of roadside ditch.
 3. Roadside Ditch Cross Piping is the piping system connecting a roadside ditch or roadside piping system on one side of the road to a roadside ditch or roadside piping system on the other side of the road, and being at the grade of the roadside ditches or piping systems.
 4. Roadside Piping Systems are shallow pipes and inlets on one or both sides of a road, which are generally at a similar grade as typical roadside ditches, and generally lack manholes.
3. Revise Section 2 to read:

“Section 2. Determination of Programs, Rules, Policies and Standards

The District is responsible for the management and operation of the **public** sanitary sewer and storm and **public** surface water systems within its boundary, and is the designated permittee who shall obtain and enforce timely compliance with relevant Federal and delegated State Clean Water Act permits for treatment plants, collection systems, and stormwater. The District, after considering input from the cities, shall adopt orders, standards, specifications, work programs, **reporting requirements**, and performance criteria for the proper and effective operation of the sanitary sewer and storm and surface water systems and to comply with State and Federal permits, laws and regulations. In addition, the District, after considering input from the cities, shall have the authority to make changes to its orders, work programs, **reporting requirements**, and performance Standards. Any such changes to work programs, **reporting requirements**, and performance standards that the Board determines are **necessary to meet or are** required by state and/or federal permits or regulations will become effective 90 days from the date of notice to City by District or as mutually agreed to. Any changes to work programs, **reporting requirements**, and performance standards, not required by state and/or federal permits and regulations, shall be mutually agreed to by the District and City before they become effective. Proposed changes not required by state and/or federal permits and regulations should be communicated between the District and the City in or before December of the year before they are to be implemented to allow District and City to budget appropriately for the following fiscal year.

A. City agrees to follow and enforce the Orders, Standards, specifications, work programs, **reporting requirements**, and performance criteria promulgated by the District, subject, however, ~~to program funding and~~ to the extent that City may be lawfully authorized to act. The City shall not be responsible for any failure to act or defect in performance caused by ~~lack of adequate program funding~~, inadequacies in the Work Program and Performance Standards as adopted by the District, or lack of lawful authority to act. ~~Lack of adequate~~

~~funding from the District and~~ Compliance with the Work Program and Performance Standards as adopted by the District shall be absolute defenses to any claim against the City under this Agreement. City further agrees to notify District of apparent violations of the subject Orders, Standards, specifications, work programs, and performance criteria, of which it has knowledge, which may require District legal action or enforcement.

4. Revise Section 3.A.1 to read:

The purpose of this agreement is to delegate to and contract with the City to perform specific ~~functions~~ **portions of the Local Program**. The responsibilities of the District and City are defined in this Section and Appendix A. Exhibit A is a map showing boundaries of responsibility between the District and City and is hereby made a part of Appendix A and incorporated into this agreement.

5. Revise Section 3.B.2 to read:

Responsibilities defined in this Section and Appendix A may be modified by the District Board after receiving input from the City and determining the change is necessary to **meet or** comply with State or Federal permits, laws or regulations. The District Board shall not reduce the total scope of City responsibilities without consent of the City unless there is a change in the program or funding requiring the reduction, or unless the Board determines the City has failed to correct identified instances of nonperformance related to the adopted standards that are necessary to **meet or** comply with state or federal permits, laws or regulations. **The District Board may adopt procedures regarding determination of nonperformance.**

6. Revise Section 3.B.3 to read:

Upon reasonable notice from City to District, District shall assume responsibility for any portion of the **Local Program** defined in this Section and Appendix A. Reasonable notice shall be at least 6 months, unless agreed to in writing by the District and City. Corresponding adjustments to the revenue allocation shall be made to reflect the change in responsibility upon implementation of such changes. City shall be responsible for correcting or paying to have corrected any deficiencies in the system resulting from non-performance of the programs under its responsibility, ~~subject, however, to funding availability~~. **For any Local Program activity the City previously elected to be performed by the District, the City may at any time request that activity be transferred back to being a City responsibility by following the procedures in Section 3.B.1 above. The District shall approve the request unless the District determined the City can not provide a reasonably equivalent level of overall efficiency. The date of the transfer of responsibility shall be as mutually agreed to, or in no case longer than one year from the date of the request.**

7. Revise Section 3.C.2 to read:

Require persons who are proposing 'development', as defined in the District's Design and Construction Standards Resolution and Order, to obtain a Service Provider Letter from the District. ~~City shall not issue a stormwater connection permit without verification that the District has issued a Service Provider Letter.~~

8. Revise Section 3.C.6 to read:

Inform the District in writing not less than 30 days prior to initiating or entering into any agreement for the financing or incurring of indebtedness relating to the storm and surface water system or the sanitary sewerage system. Revenues ~~allocated by the District to the City defined in Section 4 of this agreement~~ for the performance of functions identified in Appendix A are considered restricted, and may only be used to perform those functions (including reasonable administration) delegated to the City for such things as operation and maintenance of the sanitary or storm and surface water system. City shall not obligate any assets or facilities of the District's sanitary or storm and surface water system for any debt. For purposes of debt funding, the District's asset schedule for storm and surface water and sanitary sewer facilities shall be the basis for determining ownership within City boundaries. In general, sanitary sewer lines 24" and over are the property of the District regardless of location, as are sanitary treatment plants and pump stations, and storm and surface water quality and quantity facilities that are one acre or greater in surface area.

9. Revise Section 4 to read:

Section 4. Determination of ~~Monthly Service Charge Rates and System Development Charges; and Division of Revenue;~~ Operating Procedures and Rules Relating to Revenue and Reporting

~~A. After consultation between City and district staff, the District Board shall determine and certify annually for both the sanitary sewerage system and for the storm and surface water system the monthly service charge and system development charge. The City agrees to impose these charges as a minimum. The City may impose additional charges as allowed in Section 4.E.4.~~

~~B. After consultation between City and district staff, the District Board shall determine and certify annually for both the sanitary sewerage system and for the storm and surface water system the portion of the monthly service charge and system development charge to be retained by the City for performance of the functions defined in this Agreement and for the City's share of annual debt service payment. Except as provided in Section 4.D, District shall notify City by the September preceding the start of the next Fiscal Year of any proposed decrease in the monthly service charge and system development charge to be retained by the City and any other proposed changes that could affect the City's 5-Year Sanitary Sewer or Stormwater Financial Forecast Plans.~~

~~C. The District Board shall not implement any significant change in the division of monthly service charge revenue from that shown in the Rates and Charges Resolution and Order No. 01-34 effective Fiscal Year 2001/2002 until July 1, 2004 with the following exceptions:~~

- ~~1. The Board may make routine principal and interest adjustments for debt service repayment.~~
- ~~2. The Board may make adjustments in response to significant increases or decreases in program responsibilities~~

A. Setting of Rates and Charges

1. After consultation between City and District staff, the District Board shall determine and certify for the Storm and Sanitary Sewer programs:
 - a. District Wide System Development Charges that apply in all areas within the District boundary.
 - b. Local System Development Charges that apply to areas outside of the City Limits.
 - c. District Wide Monthly Service Charge Rates that apply in all areas within the District boundary.
 - d. Monthly Service Charge Rates for the Local Program that apply to the areas outside the City limits.
 - e. Funding levels for elements of the Local Program performed by the District within the City's Area of Geographic Responsibility.
 - f. Funding levels for elements of the Local Program performed by the District within the City Limits but outside of the City's Area of Geographic Responsibility.
 - g. Funding levels for elements of the Local Program performed by the City outside of the City Limits but inside the City's Area of Geographic Responsibility.
 - h. Funding levels for elements of the Local Program performed by the District within the City Limits but outside of the City's Area of Geographic Responsibility where the City identifies a higher level of service than in the District's adopted standards.
 - i. Elements within items "e" through "h" of this subsection may be expressed in terms of monthly service charge rates or rates per unit of facility.
2. The City shall set for the Storm and Sanitary Sewer programs:
 - a. Local System Development Charges that apply to areas inside the City Limits.
 - b. Monthly Service Charge Rates for the Local Program that apply to the areas inside the City Limits.

B. Collection of Rates and Charges as set in Section A above

1. The District shall collect for both the Storm and Sanitary Sewer programs:
 - a. System Development Charges in areas where the District issues connection permits.

- b. Local and District Wide Monthly Service Charges in areas where the District provides the billing function.
 2. The City shall collect for both the Storm and Sanitary Sewer programs:
 - a. Local and District Wide System Development Charges in areas where the City issues connection permits.
 - b. The Monthly Service Charges for the District Wide Rate and the Local Rate in areas where the City provides the billing function.
- C. Transfer and Remittance of Funds
 1. The District shall transfer to the City the portion of the Storm and Sanitary Sewer revenue from the Local Rate collected for the elements of the Local Program performed by the City in areas that are inside the City's Area of Geographic Responsibility, but where the District does the billing.
 2. The City shall transfer to the District for the Storm and Sanitary Sewer Programs:
 - a. Revenue from the District Wide System Development Charges collected by the City.
 - b. Revenue from the District Wide Monthly Service Charge Rate collected by the City.
 - c. The portion of the revenue from fees and the Local Monthly Service Charge rate for the elements of the Local Program performed by the District within the City Limits and within the City's Area of Geographic Responsibility.
 - d. The portion of the revenue from fees and the Local Monthly Service Charge rate for the elements of the Local Program performed by the District within the City Limits but outside the City's Area of Geographic Responsibility.
 - e. Funds for performance of elements of the work program by the District within the City Limits but outside the City's Area of Geographic Responsibility where the City has identified a higher level of service than in the adopted District standards.
- D. ~~Changes in the division of revenue will typically be made as a part of the annual Fiscal Year budget process. However, the division of revenue may be adjusted by the District to recognize changes in responsibilities that occur outside the normal budget cycle after coordination and communication with the Cities. Any such mid-year changes in the division of revenue initiated by the District Board shall only be implemented when the Board determines such a change is necessary to comply with State or Federal permits, laws or regulations. If there is a mid-year change in responsibilities, which the District determines to be significant, the District Board may, upon 60 days notice to City, adjust the division of revenue outside of the annual budget process. Determination by the District of the items in Section 4.A.1 will typically be made as a part of the annual Fiscal Year budget process. However, these rates and funding levels may be adjusted by the District to recognize changes that occur outside the normal budget cycle after coordination and communication with the Cities. Any such mid-year changes initiated by the District Board shall only be implemented when the Board determines such a change is~~

necessary to comply with State or Federal permits, laws or regulations, or that are due to changes in responsibility.

E. Operating Procedures Relating to Revenue

~~1. City shall remit to the District the portion of sanitary sewer service charges and systems development charges collected, and storm and surface water service charges and systems development charges collected, less the City Portion, as identified in Section 4.B.~~

1. Payments shall be remitted on a monthly basis, with a report on District designated forms.
2. Payments ~~to the District~~ of revenue collected by the billing party shall be due within 20 days following the end of each month, unless the payment has been appealed by the billing party.
3. City may charge and collect a **Local Monthly Service Charge** or System Development Charge at a higher rate per DUE and ESU than that set by the District when the City determines it is needed for the **Local City Program elements performed by the City system.** ~~The City shall retain 100% of these additional revenues collected.~~ Such additional charge shall be consistent with the services provided by City and with applicable federal rules in order to preserve eligibility for grants and other funding programs.
- ~~4. City may request District to perform permit and inspection services for private development construction of public storm and surface water facilities and sanitary sewer facilities, and for erosion control. City shall remit to the District the fee set forth in District's Rates and Charges to compensate District for its costs for such services performed relative to these fees, as prescribed by District Order or separate agreement with City.~~
4. For Industrial Waste fees, District shall remit to City **5 percent a percentage** of system development charges, **and 15 percent of the volume**, and monthly service charges collected **within the City's Area of Responsibility equal to the percentages of service charges retained by the City as defined in Section 4.B.** District shall retain one hundred percent (100%) of the annual Industrial Waste permit fee, and any penalty fees, COD, SS (as those terms are defined in the Rates and Charges) and other fees related to Industrial Waste that may be assessed.
5. City will institute administrative procedures to diligently maintain regular billings and collection of fees, adjust complaints thereto, and pursue delinquency follow-ups and take reasonable steps for collection thereof.
6. City and District shall each establish separate accounts for the storm and surface water program and sanitary sewerage program for the purpose of accounting for

service charges and systems development charges collected and received pursuant to this agreement.

7. District or City may at any reasonable time upon reasonable notice inspect and audit the books and records of the other with respect to matters within the purview of this Agreement.
 8. City and District shall each prepare and submit to each other a performance report of the storm and surface water functions, and the sanitary sewer functions for which each is responsible. After consultation with the City, District will specify the requirements, frequency, and content of the performance report.
 9. The City and District may, each at its own cost, install permanent and temporary volume and quality monitoring stations, and other monitoring equipment, to determine the effectiveness of City and District programs.
 10. Interest shall accrue on late monthly payments as specified in Section 4.~~CE-1~~ at a rate of 1.25 times the monthly Local Government Investment Pool (LGIP) earnings rate as posted for the previous month, and will be applied each month to the unpaid balance.
 11. ~~The City and District will form a CIP Review Committee along with representatives from other Cities within the District's boundary for the purpose of recommending the prioritization and funding of sanitary sewer and Stormwater collection system projects. Board will adopt the CIP funding and project selection only after holding a public hearing to allow the Cities to provide additional input to the Board.~~
10. Revise Section 5.G to read:

District and City acknowledge that District may receive notices of violation or fines from state or federal agencies for violations of state or federal rules. As the permittee and the entity that establishes standards and controls payment, District shall be responsible for responding to notices of violations and for payment of all fines. District shall invite the City to participate in any discussions with State and Federal agencies regarding notices of violation involving City actions or responsibility. City will cooperate with District in the investigation and response to any notice of violation involving actions relating to actions or responsibilities of the City. If a fine is imposed, City shall reimburse District to the extent that the fine results from non-performance of adopted programs or non-compliance with District, State, or Federal rules or policies by the City and those acting on behalf of the City. If possible, the City shall reimburse the District prior to the date due for payment of the fine. ~~The City shall not be responsible for reimbursement if the City's non-performance or non-compliance was caused by lack of adequate funding by District.~~ If more than one party is responsible, the City's responsibility for reimbursement payment will be allocated based on the degree of responsibility and degree of fault of the City. Disputes over the amount of reimbursement shall be resolved by the dispute resolution process set out in Section 6 of this Agreement. ~~To the extent that the City is required to perform any work to correct a violation,~~

~~District shall provide adequate funding for the work to be performed, unless the violation was caused by the City's omission or misconduct.~~

11. Revise Section 7 to read:

1. This Agreement shall supersede all prior agreements of similar scope and subject matter, including amendments and the “City Committee Agreement” between the parties with respect to sanitary sewerage and service, storm and surface water management; provided that, except as expressly modified herein, all rights, liabilities, and obligations of such prior agreements shall continue. This agreement shall be effective upon its execution by both parties hereto, ~~and unless terminated earlier, shall end at the end of the day on June 30, 2027 and shall continue in effect for four renewable terms of five years each.~~
2. ~~This Agreement shall be deemed automatically renewed for a single succeeding five year term up to a limit of 25 years, unless either party gives the other written notice not less than one year prior to the nominal expiration of term of its intent not to renew this agreement.~~ This agreement may be terminated when either party gives the other written notice per the dates in the table below of its intent not to renew this agreement, and the agreement shall then terminate on June 30 of the following calendar year.

Notice given on or prior to June 30 of	Termination effective at the end of the day on June 30 of
2009	2010
2010	2011
2011	2012
2016	2017
2021	2022

3. ~~The notice of termination may be withdrawn at any time prior to the termination date with written approval of the City’s Chief Executive Officer and District General Manager.~~
4. If District enters into an intergovernmental agreement with any other city in its territory covering the same subject as this Agreement and if any of the provisions of the other agreement differ from this Agreement, the City may elect to replace any provision of this Agreement with the parallel provision from the other agreement, with the exception of Appendix A and Exhibit A. The replacement shall be effective on receipt by District of written notice from the City. This Agreement may not otherwise be modified except by written amendment or as otherwise specified in this Agreement.

IN WITNESS WHEREOF, this instrument has been executed in duplicate by authority of lawful actions by the Council and District’s Board of Directors.

CLEAN WATER SERVICES

CITY OF SHERWOOD, OREGON

By _____
General Manager

By _____
City Manager

Approved as to Form:

Attest: _____
City Recorder

Attorney for District

City Attorney