



RESOLUTION 2013-036

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE CLEAN WATER SERVICES (CWS) TO UTILIZE SYSTEM DEVELOPMENT CHARGE (SDC) FUNDS IN THE CONSTRUCTION OF THE TONQUIN EMPLOYMENT AREA SANITARY SEWER UPGRADE PROJECT

WHEREAS, the Tonquin Employment Area Sanitary Sewer Upgrade (TEASU) project is identified in the City's Sanitary Sewer Master Plan as Area 48 North Capacity Upgrade (Project Number 8); and

WHEREAS, the master plan indicates an increase in pipe size based on future development capacity needs for the Tonquin Employment Area (Area 48); and

WHEREAS, the existing IGA between CWS and the City dated January 4, 2005, wherein the delegation of responsibilities and shared costs are apportioned; and

WHEREAS, the TEASU project is eligible for proportional share capital fund reimbursement from CWS; and

WHEREAS; an IGA is required between CWS and the City to outline the terms of the project and project funding before SDC funds can be used on the project; and

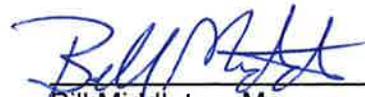
WHEREAS, it is in the best interests of the City of Sherwood and its residents to take advantage of the benefits offered by the IGA.

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

Section 1: The City Manager is authorized to sign the IGA, attached as Exhibit A to this Resolution.

Section 2: This Resolution shall be effective as of the date of its adoption by the City Council.

Duly passed by the City Council this 16th day of July 2013.



Bill Middleton, Mayor

Attest:



Sylvia Murphy, CMC, City Recorder

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF SHERWOOD AND
CLEAN WATER SERVICES TO CONSTRUCT
TONQUIN EMPLOYMENT AREA SANITARY SEWER UPGRADE
PROJECT (D-010) NO. 6598**

This Agreement, dated May 21, 2013, is between CLEAN WATER SERVICES (District), a county service district organized under ORS Chapter 451 and the CITY OF SHERWOOD (City), a municipal corporation of the State of Oregon.

A. RECITALS

ORS 190.003 - 190.110 encourages intergovernmental cooperation and authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement is authorized to perform.

City intends to undertake the Tonquin Employment Area Sanitary Sewer Upgrade Project (D-010) No. 6598 (Project) to provide capacity for industrial development in the Tonquin area recently annexed into Sherwood. This Project has been endorsed by the Capital Improvement Program Prioritization Committee.

NOW, THEREFORE, the parties agree as follows:

B. PROJECT SCOPE

The project includes upsizing 2069 linear feet of existing 10-inch sewer along Pacific and Western Railroad and Tualatin Sherwood Road to 15-inch sewer through a combination of pipe-bursting and open trench construction (15-inch Sewer) and upsizing 968 linear feet of existing 8-inch sewer along 13985 SW Tualatin Sherwood Road eastward to the intersection with Oregon Street to 12-inch sewer using open trench construction methods (12-inch Sewer). See attached Exhibit A for the Project location.

C. DEFINITIONS

1. Capital Improvement Program Prioritization Committee – A Committee established by District and District’s member Cities of Beaverton, Cornelius, Forest Grove, Hillsboro, Tigard, Tualatin, and Sherwood.
2. Financial Partner –City or District will assume this role, primarily for the purpose of funding a portion of the Project.
3. Managing Partner –City or District will assume this role, primarily for the purpose of administering the Project.

D. DISTRICT OBLIGATIONS

District is the Financial Partner and shall perform all Tasks identified for the Financial Partner in the List of Standard Obligations, attached hereto as Exhibit B unless the Task is checked "Not Applicable". District shall assign Andy Braun as District's Project Manager.

E. CITY OBLIGATIONS

City is the Managing Partner and shall perform all Tasks identified for the Managing Partner in Exhibit B unless the Task is checked "Not Applicable". City shall assign Bob Galati as City's Project Manager.

F. GENERAL TERMS

1. Laws and Regulations. City and District agree to abide by all applicable laws and regulations.
2. Term of this Agreement. This Agreement is effective from the date the last party signs it and shall remain in effect until the Project is complete as indicated in writing by the Parties, and the Parties' obligations have been fully performed or this Agreement is terminated as provided herein.
3. Amendment of Agreement. City and District may amend this Agreement from time to time, by mutual written agreement.
 - A. Proposed changes of scope during the Project implementation must be reviewed and endorsed by an affirmative vote of the Capital Improvement Program Prioritization Committee. Changes necessitated by conditions discovered during design or construction, but consistent with the original scope of the Project, may be approved by the Managing Partner without further approval.
 - B. The construction contract amount of the Project may be increased by up to 20% of the original contract amount for constructions costs without amending the Agreement, provided the increase shall not exceed the not to exceed amount contained in Exhibit B.
4. Termination. This Agreement may be terminated immediately by mutual written agreement of the parties, or by either of the parties notifying the other in writing prior to award of a construction contract, with the termination being effective 30 days from receipt of notice.
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. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall indemnify and defend the other and their officers, employees, agents, and representatives from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, contractors or representatives.
7. Attorney Fees. If any dispute arises concerning the interpretation or enforcement of this Agreement each party is responsible for its own attorney fees, paralegal fees, costs, disbursements and other expenses, including without limitation those arising before and at any trial, arbitration, or other proceeding and in any appeal.
8. Resolution of Disputes. If any dispute out of this Agreement cannot be resolved by the project managers from each party, the City Mayor and District's General Manager will attempt to resolve the issue. If the City Mayor and District's 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.
9. Interpretation of Agreement.
 - A. This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision.
 - B. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in construing 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, modifications or waivers of any portion thereof shall not be effective until approved in writing 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) City. Proposed changes of scope must also be approved by affirmative vote of the Capital Improvement Program Prioritization Committee.

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 County, Oregon.

CLEAN WATER SERVICES

CITY OF SHERWOOD, OREGON

By: _____
General Manager or Designee

By: _____
Mayor or Designee

Dated: _____

Dated: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

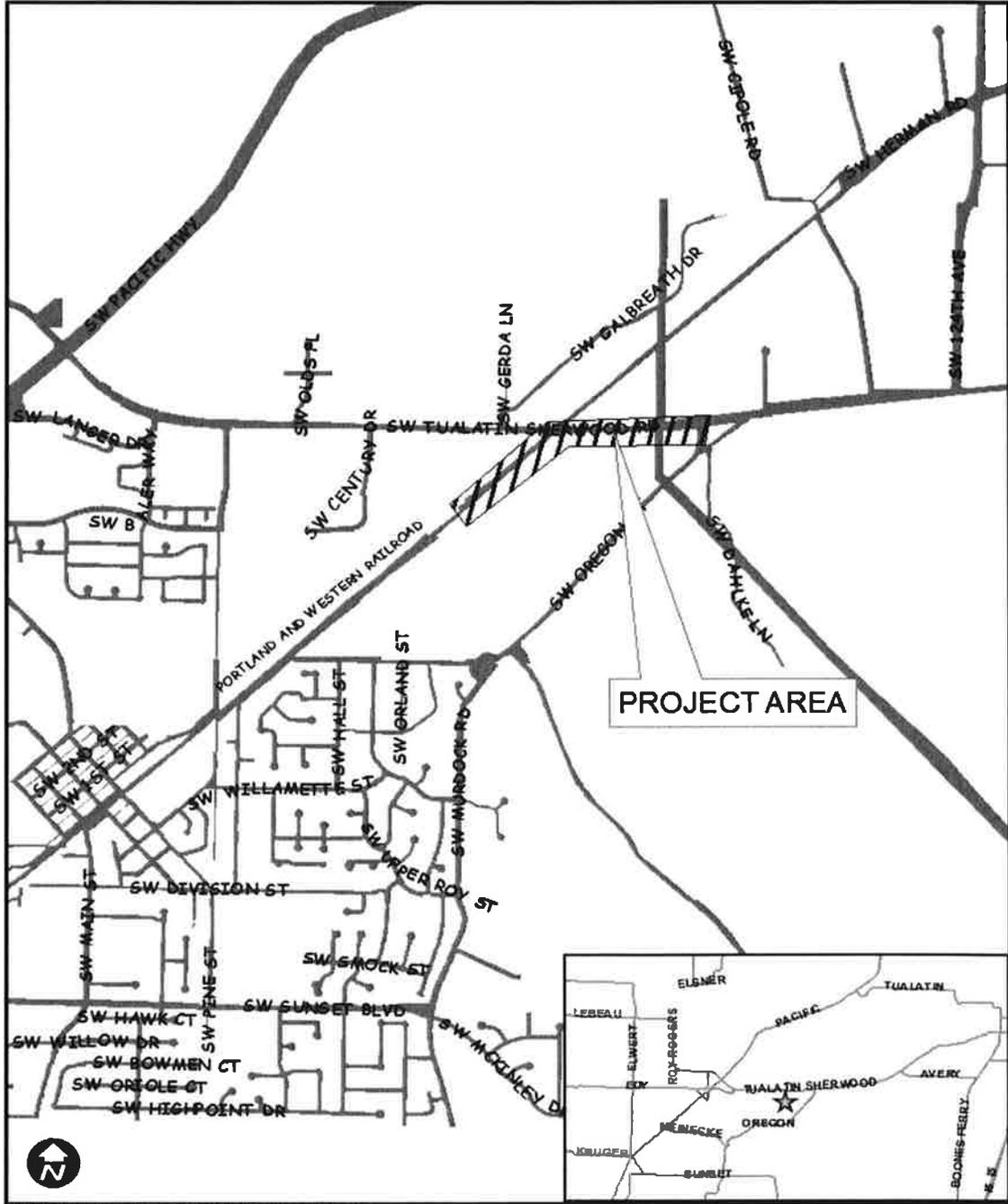
District Counsel

City Counsel

Exhibit A Project Location Map

PROJECT 6598 TONQUIN EMPLOYMENT AREA SANITARY UPGRADE

Exhibit A



**EXHIBIT B
 LIST OF STANDARD OBLIGATIONS**

Task	Not Applicable
<u>Managing Partner shall:</u>	
Provide Financial Partner at least ten days to review Project plans and specifications and incorporate Financial Partner’s comments into the plans as mutually agreed upon.	<input checked="" type="checkbox"/>
Provide any required notice and communicate with the neighborhood and property owners within the Project limits. Respond to public calls arising from work being completed under this Agreement.	<input type="checkbox"/>
Prepare and submit invoices of the Project costs to Financial Partner annually in July and at project completion.	<input type="checkbox"/>
Make all required payments to the construction contractor.	<input type="checkbox"/>
Prepare and submit a Project summary of completed tasks to Financial Partner with each invoice	<input type="checkbox"/>
Prepare all contracts and bid documents, advertise for bids, and select a construction contractor for the Project.	<input type="checkbox"/>
Construct the Project and provide construction inspection and management services for the Project.	<input type="checkbox"/>
If requested, hold progress meetings with Financial Partner during the field investigation and design phases of the Project. Financial Partner may review options and provide input on the Project.	<input type="checkbox"/>
Pay 100 percent of the following costs for the new 12-inch Sewer and 20 percent for the new 15-inch Sewer: administration, easements, field inspection, survey, public involvement, design, bidding, construction and construction administration (Project Costs).	<input type="checkbox"/>
Require all contractors to include Financial Partner as an additional insured on insurance coverage required for construction work performed in completing the Project.	<input checked="" type="checkbox"/>
Coordinate public involvement related to the Project.	<input type="checkbox"/>
Waive any land use or permit fees (except plumbing inspection fees) for work related to the Project.	<input type="checkbox"/>
City currently has sewer fund balances, including a sewer development charge (SDC) balance. City has been allowed to retain these balances to “spend down” on sewer-related projects within the City, regardless of funding responsibilities. Funding for the Project shall include \$_____ from City’s existing sewer fund balances.	<input checked="" type="checkbox"/>

EXHIBIT B
LIST OF STANDARD OBLIGATIONS

<u>Infiltration and Inflow Abatement projects</u>	
Obtain written permission from each property owner to inspect their sanitary sewer lateral and to line or replace it if deficient.	<input checked="" type="checkbox"/>
Establish whether each property has a cleanout at the structure. If no cleanout exists, Managing Partner will install one.	<input checked="" type="checkbox"/>
Inspect and evaluate each sanitary sewer lateral and main with a television camera. Managing Partner will line or replace all deficient sewer laterals and mains.	<input checked="" type="checkbox"/>
Other: (please describe) _____	<input checked="" type="checkbox"/>
<u>Financial Partner shall:</u>	
Review Project plans and specifications and provide Managing Partner with written comments and/or approval within 10 days of receipt.	<input checked="" type="checkbox"/>
Have the right to approve the final acceptance of the Project after construction.	<input type="checkbox"/>
Pay Managing Partner 80 percent of the Project Costs for the new 15-inch Sewer, not to exceed \$690,550.	<input type="checkbox"/>
Pay invoices submitted by Managing Partner for actual costs incurred within 30 days of approving the invoice. The invoice shall include full progress payment amounts, including typical construction retainage.	<input type="checkbox"/>
Assist Managing Partner in communicating with the property owners and Project stakeholders regarding progress and/or any material issues that arise.	<input checked="" type="checkbox"/>
Other: (please describe)	<input checked="" type="checkbox"/>